

# TITLE 6300 - PROCUREMENT MANAGEMENT

## CHAPTER 6320 - CONTRACTING

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H - Handbook



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6321 - CONTRACT ADVERTISING

6321.1 - Purpose and Scope. \*-All purchases and contracts for property and services, including construction, shall be made by advertising in accordance with section 303 of the Federal Property and Administrative Services Act of 1949, as amended, except where negotiation is authorized by section 302c of the act or by other law. -\*

6321.2 - Requirements. Advertising that gives reasonable publicity to the needs of the Forest Service and results in obtaining the benefit of all competition available in the particular case generally will be regarded as complying with the Statutes. Proposals for contracts, unless negotiating procedures are used, should be advertised by written solicitation of firms known or believed to be in a position to quote in accordance with the specifications. Sufficient time will be allowed to insure adequate consideration by all prospective bidders.

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Advertising must necessarily be governed by the nature of the job to be done. Contracts of substantial size are sought by firms that are located several hundred miles from the proposed site, while smaller jobs will usually be sought by local contractors only. In any event, the advertising should be such that it will afford every firm within a practicable distance an opportunity to bid.

There follows a detailed explanation of each advertising requirement:

1. Exceptions to Contract Advertising (FSM 6301.24).
2. Mailing List and Selection of Contract Bidders

a. Mailing List. In order to secure unrestricted competition, procurement officers regularly engaged in purchasing work should maintain in their files a list of prospective bidders, classified by products. Such lists should be used in the solicitation of bids or quotations. The listings should be kept current by eliminating names of firms or individuals who repeatedly fail to respond to invitations and by adding names of new bidders.

Trade directories, such as Thomas' Register and MacRae's Blue Book, and the business-directory section of city and telephone directories, are valuable for obtaining names and addresses of prospective suppliers. Records of previous purchases and contracts are important sources of information. Other Federal agencies in the vicinity may be able to supply valuable information.

Offices regularly engaged in construction work should assemble a list of prospective bidders classified by specialties, bonding capacity, and location of operations. The State office of the American General Contractors Association is an excellent source of help in contacting and listing contractors, and in most cases information on equipment ownership, financial standing, and general reputation can be secured. Mailing lists should, of course, be periodically reviewed and made current.

Any responsible bidder regardless of location has a legitimate right to quote on requirements. No attempt should be made to restrict the mailing lists to firms in the locality of the purchasing or receiving office.

(1) Listing of Firms in Areas of Substantial Labor Surplus. Defense Manpower Policy 4 (Revised), issued by the Director, Office of Civil and Defense Mobilization, requires that all agencies assure that firms in labor surplus

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areas will be given the opportunity to submit bids on all procurements for which they are qualified. Where bidders' mailing lists are maintained, they should be reviewed periodically to ascertain that appropriate listings of qualified bidders from areas of substantial labor surplus are included.

Current lists of areas of substantial labor surplus as classified by the Department of Labor are issued by the Office of Plant and Operations.

(2) Removal From Lists for Failure To Respond.

Failure of a person or firm to bid in response to a particular invitation or to indicate a further interest in bidding on the commodity or service involved may be considered in determining whether the name of such person or firm should be removed from the mailing list. This action should not be taken, however, if in individual cases retention on the list is determined to be in the best interests of the Government.

(3) Mailing List Applications. When information concerning qualification of bidders is desired, Standard Form 129, Bidder's Mailing List Application, shall be used for the establishment and maintenance of bidders' mailing lists. That form has been prescribed by the Administrator of General Services for use in connection with bidders' mailing lists for the purchase of personal property and nonpersonal services within the 50 States and the District of Columbia. For construction firms, additional forms entitled "Experience Questionnaire," "Plan and Equipment Questionnaire," and "Contractor's Financial Statement" should be used to secure these data from the prospective bidder. These forms are available from the Central Supply Section, Office of Plant and Operations.

(4) Disclosure of Bid Mailing Lists. No bidder will be informed as to the person or firms with whom he is competing. He may, of course, attend bid openings or call at the office which conducted the opening at a later date and thereby obtain information concerning those bidding and those declining to bid in particular cases. Bidders' mailing lists should not be made public, but a firm's representative may be advised whether or not his firm's name is on a particular list and a dealer may be told whether the manufacturer he represents is listed.



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In the case of construction jobs, bidding lists may be inspected prior to the opening of bids, by persons having a legitimate interest, including publishers of commercial bulletins or reports concerning proposed or going construction. This deviation from the general policy for supply contracts is permitted in order that subcontractors may be provided with information which will enable them to contact general contractors for the purpose of furnishing estimates on the portion of the work that they can perform.

b. Selection of Bidders. When information is available in advance of bid solicitation, invitations for bids should be sent only to those prospective bidders who are considered responsible and competent to perform the work required by the bid specifications. However, no bidder may be refused an opportunity to bid. Invitations to bid should be sent to all dealers as well as manufacturers within reasonable distances who are in position to furnish the desired commodity or service. An invitation to bid sent to fewer than three prospective bidders does not constitute sufficient advertising in the absence of facts showing emergency conditions requiring immediate delivery or other justifiable circumstances.

c. Debarred Bidders

(1) Purpose. This section prescribes policies and procedures relating to the debarment of bidders for any cause, and ineligibility of bidders under section 1(a) of the Walsh-Healey Public Contracts Act; and the establishment and maintenance of a consolidated list of firms and individuals debarred or ineligible. These policies and procedures apply to all agencies in effecting procurements by negotiation or advertisement, and in contracting for the construction, repair, alteration, destruction, or dismantlement of public works or buildings.

(2) Authority. GSA Federal Procurement Regulations, Subpart 1-1.6--Debarred and Ineligible Bidders.

(3) Establishment and Maintenance of List. The Office of Plant and Operations will establish and maintain a consolidated list of firms and individuals, debarred in accordance with subsection (4) below, to whom contracts will not be awarded and from whom bids will not be solicited. The list and all correspondence relating thereto are for administrative use only and are not to be disclosed to the public. This list shall be kept current by issuance of notices of additions and deletions, made available to all contracting officers through the issuance of the Office of Plant and Operations

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Memorandum No. 24 and supplements thereto, and shall show, as a minimum, the following information:

The names of those firms or individuals debarred or ineligible, with appropriate cross reference when more than one name is involved in a single action.

The basis of authority for each action.

The extent of restrictions imposed.

The termination date for each listing.

(4) Bases for Inclusion on List. Firms and individuals which have been subject to the following actions will be included on the consolidated debarment and ineligible list:

Listed by the Comptroller General in accordance with the provisions of section 3 of the Walsh-Healey Public Contracts Act (41 U.S.C. 37) which have been found by Secretary of Labor to have violated any of the agreements or representations required by that act.

Listed by the Comptroller General in accordance with the provisions of section 3 of the Davis-Bacon Act (40 U.S.C. 276a-2(a)) as found by the Comptroller General to have violated that act.

Those the Office of Plant and Operations determines to debar administratively for (1) any of the causes and under all of the appropriate conditions listed below, or for (2) any other cause which that office administratively determines is sufficient for inclusion.

Determined by the Department in accordance with section 3 (b) of the Buy-American Act (41 U.S.C. 10b(b)) to have failed to comply with the provisions of section 3 (a) of that act under any contract containing the specific provisions required by said section 3(a) and made by the agency for construction, alteration, or repair of any public building or public work.

Those found by the Secretary of Labor ineligible to be awarded contracts subject to the Walsh-Healey Act for the reason that they do not qualify as "manufacturers" or "regular dealers" within the meaning of the act.

Those listed by the Comptroller General in accordance with the provisions of the Regulations of the Secretary of Labor issued pursuant to authority granted under



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Reorganization Plan 14 of 1950, as found by the Secretary of Labor to be in aggravated or willful violation of the prevailing wage or overtime pay provisions of any of the following statutes:

Davis-Bacon Act, as amended (40 U.S.C. 276a-2(a)).

Anti-Kickback Act, as amended (18 U.S.C. 874; 40 U.S.C. 276b, c).

Eight-Hour Law, as amended (40 U.S.C. 321 et seq.).

National Housing Act, as amended (12 U.S.C. 1703 et seq.).

Hospital Survey and Construction Act (42 U.S.C. 291 et seq.).

Federal Airport Act, as amended (49 U.S.C. 1101 et seq.).

Housing Act of 1949 (42 U.S.C. 1401 et seq.).

School Survey and Construction Act of 1950 (20 U.S.C. 251 et seq.).

#### (5) Restrictions

Total Restrictions. Contracts shall not be awarded to firms or individuals that are listed on the basis of subsection (4) above, or to any firm, corporation, partnership, or association in which such firm or individual has a controlling interest, nor shall bids be solicited therefrom; provided, however, that when it is determined essential in the public interest by the Secretary or his designee, an exception may be made with respect to a particular procurement action (even when a firm or individual is listed as debarred on the basis of (4)).

Buy-American Act Restrictions. As specified in the Buy-American Act, contracts shall not be awarded for construction, alteration, or repair of public buildings or public works in the continental United States or elsewhere to firms or individuals listed on the basis of Buy-American Act violations only, nor shall they be solicited for bids therefor. However, firms or individuals listed on this basis may be awarded contracts and

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may be solicited for bids for other than construction, alteration, or repair of public buildings or public works in the continental United States or elsewhere.

Ineligibility Restrictions of the Walsh-Healey Act. Contracts shall not be awarded to firms or individuals in any amount exceeding \$10,000 for those materials, supplies, articles, or equipment with respect to which the firm or individual has been found by the Secretary of Labor to be ineligible to be awarded a contract as provided in subsection (4) above. However, firms or individuals listed on the basis of ineligibility to qualify as manufacturers or regular dealers may, in the discretion of each agency, be awarded contracts and may be solicited for bids for: (1) such materials, supplies, articles, or equipment when the amount does not exceed \$10,000; (2) services regardless of the amount; and (3) commodities in which not declared ineligible regardless of amount.

Restrictions Under Statutes Designated in the Regulations of the Secretary of Labor. A contractor listed on the basis of (4) above, or any firm, corporation, partnership, or association in which such contractor has a controlling interest, shall be ineligible for a period of 3 years (from the date of publication by the Comptroller General) to receive any contracts subject to any of the statutes listed above.

3. Impartiality Toward Prospective Bidders. Absolute impartiality must be shown all bidders. No information should be given one bidder that is not given another. If a prospective bidder, claiming that the specifications are not clear in some particular, asks for explanation or amplification, and it is necessary to revise or clarify the written specifications, the same information should also be given to all other prospective bidders in the form of an addendum to the invitation for bids.

4. Distribution of Contract Bid Invitations. When an invitation for bids is ready for release, copies should be distributed as follows:

a. Mailing List. Copies of the invitation for bids should be sent to each person and firm listed in the mailing list for the commodities involved. Normally, one or two copies of the bid invitation to each prospective bidder will suffice. If bidders request additional copies, they may be furnished.

b. Public Posting. A copy of the invitation for bids or a notice of the issuance thereof should be posted in a conspicuous

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place at the office of issuance and, if practical, at the local courthouse, post office, or other public meeting place.

c. Distribution of Copy of Invitation for Free Publication

In some cities there are publishing firms which publish a list of Government invitations for bids, etc., free of charge. If such a publishing concern is located near the procurement office, copies should be furnished. This will increase publication of the invitation and in many instances allow for wider competition. Also, effective use often may be made of trade journals, chambers of commerce, and others accepting and advertising notices of invitations for bids without cost to the Government.

d. Requisitioner. A copy of each invitation for bids issued should be furnished to the requisitioner in order that he may be apprised of the final specifications and of any special conditions attaching to the proposed contract. This will afford him an opportunity, prior to the opening of bids, to review the pertinent factors for conformity with his requirements.

e. Requests for Invitations for Bid. Requests received from prospective bidders for copies of outstanding invitations to bid should not be denied and copies should be furnished as requested.

This does not, however, have the effect of prequalifying a bidder and such a bidder may be rejected for good and substantial reasons if found to be incompetent and unqualified to receive the award.

f. Department of Commerce Field Office. In order to familiarize industry at large and small business in particular with the requirements of the Government, and to provide them an opportunity to bid thereon, the Department of Commerce has arranged for its field office at Chicago to publish a Synopsis of U. S. Government Proposed Procurement and Contract Awards. This synopsis is published daily and is disseminated through other Department of Commerce field offices and cooperating chambers of commerce, trade associations, and banks. Information will be furnished the Department of Commerce office in Chicago concerning each invitation for bids issued in the continental United States, including Alaska, for construction work or for the furnishing of supplies or services which meets either of the following conditions:

The total cost is estimated at \$25,000 or more.

The total cost is estimated at less than \$25,000, when other than local bid solicitation is made, and the proposed procurement is substantial enough to be of interest to business outside the local area.



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The information will be transmitted by airmail letter, double spaced, to Administrative Service Officer, Field Service Office, U. S. Department of Commerce, 433 West Van Buren Street, Chicago 7, Illinois, and shall consist of (1) the name and address of the office issuing the invitation for bids, (2) brief description of the items and quantities desired, (3) the serial number assigned the invitation, (4) date on which will be opened, and (5) identification where appropriate of those procurement actions set aside for small business.

5. Records of Contract Bid Invitations. Procedures should provide for the maintenance of records that will assure the ready availability of the following information and documents:

- a. The name and address of each person or firm furnished a particular invitation for bids.
- b. A copy of the invitation for bids, identified by serial number.
- c. Correspondence or other pertinent data concerning an invitation for bids.
- d. Prior to opening of bids the bidding list should be kept confidential. Requests for names of prospective bidders should be denied except in case of construction jobs where the names of general contractors may be released to prospective subcontractors and to free publications (FSH 6321.2(2)).

6. Newspaper Advertising of Contract Bid Invitations. In soliciting bids for the purchase of supplies, equipment, services, construction, etc., it shall be the responsibility of the officer inviting the bids to determine whether advertising in newspapers is necessary in order to cover adequately the field of competition. In construction cases particularly, the possible benefits to be obtained from advertising in newspapers should not be overlooked. The contracting officer shall in all cases determine prior to award the adequacy of the competition solicited.

a. Selection of Advertising Medium. In placing official advertising in newspapers, no favoritism shall be shown to any publication and there shall be no discrimination either for or against any publication because of its editorial attitude. The sole consideration to govern in the placing of advertising shall be the legality of the use of the medium and its adequacy for the accomplishment of the purpose of the advertising.

b. Advertising Order. All advertising for which payment is required will be covered by Standard Form 1143, Advertising Order (printed on reverse of Standard Form 1144, Public Voucher

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for Advertising) with copies on Standard Form 1143a. In addition to the original Advertising Order Form 1143, the publisher should be furnished a copy on Form 1143a for his records, since he returns the original, the reverse side of which is the Public Voucher for Advertising. Both the original and the publisher's copy of the Advertising Order should be autographically signed by the person authorized to order publication of the advertisement or the one designated as "Acting." Orders should show as authority L. A. 100-W, 7/1/49, which is effective until rescinded.

The advertisement should show: (1) location of the work, (2) nature of the work (which will reflect the magnitude of the job and the trades involved), (3) form of contract to be required, (4) bonds, required, (5) where to obtain plans, specifications, and bid forms, (6) amount of deposit or purchase cost to obtain plans and specifications, (7) time and place of opening of bids, and (8) the invitation number assigned.

The specifications for advertising to be set other than solid should be definite, clear, and specific since no allowance will be made for paragraphing or for display or leaded or prominent headings, unless specifically ordered, or for additional space required by use of type other than that specified in the sworn statement of advertising rates on file in the General Accounting Office. Specifications for advertising other than solid will accompany the advertisement copy submitted to the publisher with the advertising order and copies of both documents will be transmitted with the voucher for payment. A sample of solid line advertisement set up in accordance with the usual Government requirements is shown on Standard Form 1143, Advertising Order.

c. Trade Journals, Etc. In addition to advertising in newspapers and by mailing invitations for bids to lists of prospective bidders, advertising may often be made more effective through the medium of trade journals, commercial advertising firms, chambers of commerce, and others accepting and advertising notices of construction jobs without cost to the Government.

7. Exploratory Contract Bids. Bid solicitation through "exploring the market" is not approved. This procedure of bid solicitation to determine the sources of supply and to have bids or quotations available for consideration, if and when funds become available and valid authorizations to purchase are at hand, results in placing a distinct hardship on bidders, not only because of the amount of time involved in preparing the bids and their anticipation of awards, but also because of the danger of revealing their prices to competitors

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and making commitments on their part, all or any of which might operate to their disadvantage in future dealings. Such bid solicitation is accordingly not approved.

When the procurement office desires price information prior to the time of actual solicitation of bids, inquiries will be made by letter or telephone, clearly indicating that prices are solicited for the purpose of information only, that no question of guaranty of delivery or stability of price for a fixed period is involved, and that the information will not be divulged to others in the same competitive field.

8. Readvertisement of Contract Bid Invitations. Readvertisements should be avoided as far as practicable, as a grave injustice may result to bidders whose prices have been revealed to their competitors as a consequence of the public opening of the original bidding. When circumstances require rejection of all bids and readvertisement is necessary, notice should be given in the readvertisement, or on a sheet attached thereto, of such rejection of all bids received under the previous advertisement.

9. Contract Bid Envelopes or Reference to Mailing Address. Prospective bidders may not be furnished with franked envelopes for use in submitting bids. While use of the printed unfranked bid envelope with date of opening and bid classification typed thereon for bidder's convenience in mailing bids has been discontinued by some procurement officers, it has been found desirable in other places to prevent mishandling of bids received. There is no law restricting use of the printed bid envelope if administratively considered advisable to use it. If the printed, addressed envelope is not used, however, prospective bidders should be notified in the invitation to identify their bid envelope by invitation number, commodity, and hour of opening. This will identify the envelope so that it may be filed properly until the hour set for opening.

10. Notices to Prospective Contract Bidders. Copies of plans and specifications can be saved if notices of proposed bids are circulated to prospective bidders. This may be accomplished by use of SF-20, Invitation for Bids (Construction Contract), or other notice at the option of the contracting officer, and the following information should be furnished: (1) location of the work, (2) nature of the work (this should reflect the magnitude of the job and the trades involved), (3) form of contract to be required, (4) bonds required, (5) where to obtain plans, specifications, and bidding forms, (6) cost of plans and specifications (in addition to the one free set), (7) time and place of opening of bids, and (8) the invitation number assigned.

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11. Preaward Discussion With Contract Bidders. Provision should be made as necessary in bids or notices of bids for preaward discussions. These discussions should be limited to clarifications of specific details or items in the bid on which there might be question. This discussion should include the various Federal acts or statutes which might be applicable under the resultant contract and the responsibilities of the successful bidder. If questions or difficulties in successful contract administration are evident, consideration should be given to the issuance of addenda or new bids.

Should it become necessary to correspond with a bidder prior to award, extreme care should be exercised to avoid any statement or question that would encourage the bidder to modify his offer (except to waive objectionable features of his bid where specifically requested to do so) or that would imply that an award different from that intended by the advertised specifications is being contemplated. Such correspondence should always be conducted by the contracting officer. Care should be taken that preferential treatment is not given to any one bidder. All bidders must be given like opportunity to receive all necessary information for submission of bids.

12. Deposit or Payment for Contract Plans and Specifications. Plans and specifications consisting of more than a few sheets are quite expensive, therefore indiscriminate requests for them should be discouraged. Requiring payment serves to limit the requests to those firms that are intent on bidding or have interest as subcontractors. One set of plans and specifications should be furnished free of charge to prime contractors and additional sets furnished on a sale basis only. (The successful bidder will be furnished, without charge, as many sets of plans and specifications as may be necessary for the job.) Of course, one complete set should be displayed in the office issuing the invitation and made available for inspection by any interested parties. When this method is employed, the following language should appear in the "Notice to Prospective Bidders":

One set of Plans and Specifications will be furnished free, upon application therefor, to general contractors only who can quote on the entire job as required. Copies of Plans and Specifications are otherwise available at \$\_\_\_\_\_ per set. Plans and Specifications will be on display for examination by interested parties at \_\_\_\_\_.

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13. Handling of Receipt Pertaining to Bid and Specification Deposits. All cash, checks, or money orders received as deposits to secure bids, the performance of contracts, or the safe return of plans and specifications which cannot be returned to the depositors within 24 hours after bids have been opened, or the remittance otherwise received, shall be deposited in a Special Deposit Account; except that remittances, other than cash, which can be returned within 1 week need not be deposited.

6322 - PREPARATION OF BID INVITATION

6322.1 - Bid Invitation Requirements--General. Certain policies and procedures have been established to govern the form and contents of invitations common to supplies, equipment, materials, services, and construction of or alteration to public works; additional requirements are covered in FSH 6322.2 for construction of or alteration to public works and in FSH 6322.3 for supplies, equipment, and services.

The forms prescribed for preparing invitations for bids are listed in FSH 6325.

For bid specifications see FSH 6331.

There follows a detailed explanation of each bid requirement.

1. Date and Hour of Bid Opening. In soliciting bids the purchasing officer should bear in mind the following facts:

- a. The urgency of need for the article or service required.
- b. The ability of bidders to submit prompt bids.
- c. Possible savings by allowing more time in which to submit bids and thus insuring a wider field of competition.

\*-Undue limitation of time allowed for submission of bids is likely to result in fewer bids and higher prices because of inability to obtain the necessary information on which to base fair and equitable bids. As a general rule, bidding time shall be not less than 15 calendar days when procuring standard commercial articles and services, and not less than 30 calendar days when procuring other than standard commercial articles or services. This rule need not be observed in special circumstances, or when the urgency for the supplies or services will not permit such delay (5 AR 202). -\*



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The same principles apply to construction bids as to other types of bids. The elements involved in each particular case will govern the amount of time that should be allowed for bidders to prepare and submit bids. Generally, the following factors should be considered: (1) whether prospective bidders are to receive complete plans, specifications, and bidding forms immediately or must, after noting published or circularized notices, request the necessary papers; (2) length of time required for mail to reach the most distant prospective bidder and return; (3) whether bidders will need bids from material men, plumbers, and other subcontractors and, if so, how much time they will require for such purpose; and (4) magnitude of the job to be performed.

The date of opening of bids for construction work which provide for payment of minimum wage rates should be set well within the 90-day wage rate period in order that the resulting contract can be awarded before the expiration of the 90-day period (FSH 6322.24).

Purchasing officers should consider what is the most suitable hour for opening bids. The hour of opening may be set at whatever hour of any regular work day is most suitable considering train and mail schedules, convenience of the public, and the urgency of the work. If the principal mail of the day arrives on a morning train, and the out-of-town bids usually arrive on that train, opening time can be set for an hour shortly after such mail is delivered. In other places an afternoon hour will be the most suitable for all concerned.

2. Numbering of Bid Invitations. Offices issuing invitations for bids should establish a numbering system for invitations issued. This will aid in identifying solicitations and facilitate bid work.

The Forest Service bid numbering system will consist of a location symbol, that is 12-58-\_\_\_\_. The actual bid numbers will follow in sequence. First number denotes unit, second number represents fiscal year.

3. Eight-Hour Law Contract Clause

a. General. The provisions of the Eight-Hour Law, as amended (40 U.S.C. 324 and 325), shall be incorporated in all contracts which may require or involve the employment of laborers or mechanics.

In Decision 18 Comp. Gen. 337, it was held that the "eight-hour work limitation law of June 19, 1912, 37 Stat. 137, is applicable to every public contract otherwise within its terms which may require the employment of labor by hand or tools for its performance, and where doubt exists as to whether there may be involved such employment, the requirements of the law should be inserted in the contract."

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The provisions of the Eight-Hour Law generally are not applicable to supply contracts. (See 18 Comp. Gen. 337.) The Comptroller General has ruled, however, that contracts for articles manufactured to the order of the Government and which can be used only by that agency of the Government, as for example, contracts for Bureau of Animal Industry meat inspection stamps bearing a Government seal, numbering and special printing, should include the provisions of the Eight-Hour Law. Under this ruling of the Comptroller General the provisions of the Eight-Hour Law should be included in contracts covering such items as specially printed forms, stamps, seals, etc.

Law (40 U. S. C. 325) specifically exempts contracts for transportation and communication service and for the ordinary purchase of supplies by the Government, whether manufactured to conform to particular specifications or not, including materials or articles as may usually be bought on the open market whether made to conform to specific specifications or not.

Examples of contracted work of the Forest Service involving service and employment of laborers and mechanics coming within the provisions of the Eight-Hour Law are: repairing, greasing, and washing equipment; collecting cones; well drilling; construction and repair of improvements, etc.

The provisions of the Eight-Hour Law are included in the U. S. Standard Form 23A, therefore no reference or attachment need be made when this form is used; these provisions are also incorporated in SF-32, General Provisions. (See also 18 Comp. Gen. 646 for further details as to application of and exemption from the provisions of this law.)

b. Eight-Hour Law of March 3, 1913. The Eight-Hour Law of 1912, cited above, should not be confused with the Eight-Hour Law of March 3, 1913 (40 U. S. C. 321 and 322) which applies only to services and employment of laborers and mechanics employed by the Government and to laborers and mechanics employed by contractors or subcontractors upon a public work of the United States. This law was supplemented by Section 303 of the Act of September 9, 1940, to permit laborers and mechanics employed by contractors and subcontractors engaged on public works to work in excess of eight hours per day if overtime compensation be paid at the rate of time and one-half for the excess hours. There is no legal requirement for its inclusion in contract provisions although the criminal penalty provision of 40 U. S. C. 321 and 322 are applicable where the contract is for a public work or a Government employee is involved.

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c. Violations. In cases of violations of the Eight-Hour Laws, the cash penalty may be imposed, where otherwise proper, under 40 U.S.C. 324 and 325 without regard to the institution or outcome of criminal proceedings under 40 U.S.C. 321 and 322, according to opinions rendered to the Secretary of Agriculture by the Attorney General (February 24, 1940) and by the Solicitor of this Department (No. 2054, January 17, 1940).

Every officer designated as an inspector of work shall, upon discovery of an apparent violation of the act, submit a report in duplicate through regular official channels to the Chief of the Forest Service in accordance with the following outline, paragraph headings of which should be repeated in the report:

- (1) Name and address of the laborer or mechanic required or permitted to work in excess of 8 hours in any calendar day.
- (2) Capacity in which employed.
- (3) Dates and total hours of employment for each day on which more than 8 hours' work was performed.
- (4) Name and address of responsible contractor or subcontractor.
- (5) Statement of inspector regarding circumstances under which he observed contractor or subcontractor requiring or permitting excess work.
- (6) Under the heading "penalty imposed," there should be an affirmative statement, by the officer approving the voucher covering payments under the contract, that for each laborer or mechanic for every calendar day on which such laborer or mechanic worked more than 8 hours, the sum of \$5 has been withheld from the contractor pending final disposition of the case.
- (7) Statements of contractor, witnesses, or other interested persons regarding the alleged violation.
- (8) Certified copy of the applicable contract.

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Executive Order 7158-A of August 23, 1935, requiring reference of cases to the Department of Justice, applies only to violations of the criminal statute. The second paragraph of this Executive order is as follows:

Government representatives in charge of public works shall report all such cases (overtime) to the heads of their respective departments or agencies, who shall refer such cases to the Department of Justice for appropriate action.

Therefore, when a case involves a violation of both statutes, the amount of the civil penalty should be withheld from amount due under the contract and the case record submitted through the Washington office and the Office of the General Counsel to the Department of Justice pursuant to the requirement in Executive Order 7158-A.

4. Buy-American Act Provisions

a. Origin Stipulated by Bidder. The provisions of the U. S. Standard Forms of Contracts for Supplies stipulate that, unless otherwise specified by the bidder, it will be understood that only domestic goods will be furnished. However, where there is reason to believe that proposals will include goods of foreign as well as domestic origin, a space should be provided in the invitation for bidders to state the origin of the goods offered. (The procedures to be followed upon the receipt of quotations offering goods of both foreign and domestic origin are outlined in FSH 6310.16.)

b. Origin Not Ascertainable. In case a vendor cannot or will not certify as to the origin of articles which, because of the exigencies of the Service, must necessarily be immediately procured, he should be asked to sign a statement to that effect on the voucher. In a certificate on, or attached to, the voucher, the officer certifying the voucher should set forth the facts as to the emergency, the unavailability of other sources of supply and, unless the vendor has himself so indicated on the voucher, the vendor's inability or unwillingness to indicate origin. To this should be added, if the facts warrant, a statement that the certifying officer could not determine origin by any independent means.

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\*-c. Construction, Alteration, or Repair.

(1) Purpose. This section implements the Buy-American Act (41 U.S.C. 10a-10d) and the policies set forth in Executive Order 10582 regarding the use of domestic or nondomestic construction materials in the performance of contracts for the construction, alteration, or repair of any public building or public work. As used in this section, construction materials means any article, material, or supply brought to the construction site for incorporation in the building or work.

(2) Policy. Only domestic construction material shall be used in the performance of contracts for construction in the United States except for particular material as to which it has been determined (1) in accordance with FSM 6310.16 that such requirement may be inconsistent with the public or national interest, or that domestic construction material is unavailable in sufficient and reasonably available commercial quantities and of a satisfactory quality; or (2) in accordance with item (4) below, that such a requirement would unreasonably increase the cost.

When it can be predetermined under (2) above that nondomestic construction material is to be used, such material shall be listed in the invitation for bids. All material excepted under (1) or (2) above shall be listed in the contract and findings justifying such exceptions shall be made a part of the contract file.

(3) Bid Invitation and Contract Provisions. Invitations for bids and requests for proposals for affected construction work shall include the following provision of exhibit 9 from 5 AR 382:

## INFORMATION REGARDING BUY-AMERICAN ACT

(a) The Buy-American Act (41 U.S.C. 10a-10d) generally requires that only domestic construction material be used in the performance of this contract. This requirement does not apply to the following construction material or components:

(List the excepted construction material or components)

(b) (1) Furthermore, bids or proposals offering use of additional nondomestic construction material may be acceptable for award if the Government determines that use of comparable domestic construction material is impracticable or would unreasonably increase the cost or that domestic construction material (in sufficient and reasonably available commercial

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\* - quantities and of a satisfactory quality) is unavailable. Reliable evidence shall be furnished justifying such use of additional nondomestic construction material.

(2) Where it is alleged that use of domestic construction material would unreasonably increase the cost:

(i) Data shall be included, based on a reasonable canvass of suppliers, demonstrating that the cost of each such domestic construction material would exceed by more than 6 percent the cost of comparable nondomestic construction material. (All costs of delivery to the construction site shall be included, as well as any applicable duty.)

(ii) For evaluation purposes, 6 percent of the cost of all additional nondomestic construction material, which qualifies under paragraph (i) above, will be added to the bid or proposal.

(3) When offering additional nondomestic construction material, bids or proposals may also offer, at stated prices, any available comparable domestic construction material, so as to avoid the possibility that failure of a nondomestic construction material to be acceptable, under (1) above, will cause rejection of the entire bid.

Contracts for affected construction shall include the following clause of exhibit 10 from 5 AR 382. This clause is to be substituted for clause 17 of SF-23A, General Provisions (Construction Contracts), pending revision of the form.

## BUY AMERICAN

(a) Agreement. In accordance with the Buy-American Act (41 U.S.C. 10a-10d) and Executive Order 10582, December 17, 1954 (3 CFR Supp.), the Contractor agrees that only domestic construction material will be used (by the Contractor, subcontractors, materialmen, and suppliers) in the performance of this contract, except for nondomestic material listed in the contract.

(b) Domestic construction material. "Construction material" means any article, material, or supply brought to the construction site for incorporation in the building or work. An unmanufactured construction material is a "domestic construction material" if it has been mined or produced in the United States.

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\* - A manufactured construction material is a "domestic construction material" if it has been manufactured in the United States and if the cost of its components which have been mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. "Component" means any article, material, or supply directly incorporated in a construction material.

(c) Domestic component. A component shall be considered to have been "mined, produced, or manufactured in the United States" (regardless of its source in fact) if the article, material, or supply in which it is incorporated was manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

The above requirements do not apply to invitations for bids or contracts executed on SF-19, Invitation, Bid, and Award (Construction, Alteration, or Repair) (FSH 6322.22).

(4) Determination of Unreasonable Cost. A determination shall be made that the use of domestic construction material would unreasonably increase the cost where, with respect to each particular construction material, (1) a bid or proposal offers nondomestic construction material (other than that excepted under (2) above) the cost of which, plus 6 percent thereof, is less than the cost of comparable domestic construction material; and (2) that bid or proposal offers the lowest price of any received, after adding to each bid or proposal, for evaluation purposes, 6 percent of the cost of all nondomestic construction material, which qualifies under (1) above), offered in each bid or proposal.

This determination should be made by evaluating the data submitted by the bidder and the making of such price inquiry as deemed necessary by the contracting officer to reasonably establish the accuracy of data used for the basis of award. The cost of construction material shall be computed as -\*

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\*-including all costs of delivery to the site and any applicable duty. Computations shall be based on costs on the date of opening of bids or proposals. Nothing herein shall preclude determinations under (2) above. -\*

5. Convict Labor Stipulationa. Executive Order 235-A

WHEREAS, by an Act of Congress which received executive approval on February 23, 1887, all officers or agents of the United States were as a matter of public policy forbidden, under appropriate penalties, to hire or contract out the labor of any criminals who might thereafter be confined in any prison, jail, or other place of incarceration for the violation of any laws of the Government of the United States of America;

IT IS HEREBY ORDERED, That all contracts which shall hereafter be entered into by officers or agents of the United States involving the employment of labor in the States composing the Union, or the Territories of the United States contiguous thereto, shall, unless otherwise provided by law, contain a stipulation forbidding, in the performance of such contracts, the employment of persons undergoing sentences of imprisonment at hard labor which have been imposed by courts of the several States, Territories or Municipalities having criminal jurisdiction.

THE WHITE HOUSE, May 18, 1905

THEODORE ROOSEVELT

b. Contract Performance by Convict Labor. Executive Order 325-A, dated May 18, 1905, requires that contracts involving the employment of labor include a stipulation forbidding the use of persons undergoing sentences of imprisonment at hard labor. That requirement is met by article 15 of SF-32, General Provisions (Supply Contract), and by article 18 of SF-23A. If neither of those forms is made a part of the contract, similar language should be written therein.

(1) Exceptions --Supplies Produced by State Prison Labor. Although the Executive order makes no exception for purchases of supplies, the Comptroller General in an unpublished decision of November 19, 1931, to the Secretary of Interior, held that in contracts for supplies that Department was not authorized to include stipulations



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against the employment of persons undergoing sentences of imprisonment at hard labor imposed by State courts unless such stipulation was specifically authorized by law (Walsh-Healey Act, sec. 505.3).

(2) Exceptions--Furnishing of Finished Articles. In his Decision B-79508, dated January 12, 1949, the Comptroller General held that Executive Order 325-A does not apply to contracts which merely require the furnishing of finished articles. That decision stated, in part, as follows:

It will be noted that the provisions of Executive Order 325-A apply only to contracts 'involving the employment of labor,' and the required stipulation forbids the employment of persons undergoing sentences of imprisonment at hard labor in the performance of such contracts. While, in one sense, contracts of nearly all types save those to forbear may be said to involve the employment of labor, it seems evident that some less inclusive category of contracts was intended to be covered by the Executive order. The first and usual impression created by the words 'involving the employment of labor' is one involving the performance of work. Thus, contracts which call for the construction of things, for the furnishing of services, or for the special fabrication of articles clearly involve the employment of labor. On the other hand, contracts which merely require the furnishing of finished articles do not necessarily involve the employment of labor in their performance, since the contractors may secure the contract articles in the open market or from existing stocks. It would appear, therefore, that contracts of the latter class should not be considered as contracts 'involving the employment of labor' within the purview of Executive Order 325-A.

c. Interstate Transportation or Convict-Made Goods. Transportation in interstate commerce of goods produced in whole or in part by convict labor is, with certain exceptions for specific application, prohibited by law (18 U.S.C. 1940 ed., Supp. 1, 396a).

One of the exceptions to the above law is a proviso to the effect that it shall not apply to commodities manufactured in Federal or District of Columbia penal and correctional institutions for use by the Federal Government. Also, the Solicitor (now General Counsel) of the Department in an opinion addressed to the Director of Finance under date of September 23, 1943 (No. 4820), held that on the basis of opinions rendered by the Attorney

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General of the United States on May 6, 1942, and June 20, 1942, the above-mentioned law does not prevent the interstate movement of goods produced by other than Federal penal or correctional institutions and that have been purchased by the Federal Government.

6. Nondiscrimination Provisions

a. Contract Provisions. Executive Order 10557, dated September 3, 1954, requires the inclusion of the following provisions in all contracts executed by contracting agencies of the United States:

Nondiscrimination in Employment

In connection with the performance of work under this contract the contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color or national origin. The aforesaid provision shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

The contractor further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

b. Definitions. The phrase "standard commercial supplies" in the standard nondiscrimination provisions means an article which:

(1) In the normal course of business, is customarily manufactured for stock and is customarily maintained in stock by the manufacturer or any dealer, distributor, or other commercial dealer for the marketing of such article.

(2) Is manufactured and sold by two or more persons for general commercial or industrial use, or is identical in every material respect with an article so manufactured and sold.

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c. When Contract Provision Is Required. The obligation to include the nondiscrimination provision exists:

- (1) Regardless of the amount of money or other consideration involved in the performance of the contract.
- (2) Even though the contract is required to be awarded to the lowest responsible bidder.
- (3) Even though the contract is between a Federal Government agency and a State agency or subdivision of a State.

d. When Contract Provision Is Not Required. The contract provision is not required to be included in the following circumstances:

- (1) The contract or subcontracts are to be performed outside the continental United States and no recruitment of workers in the continental United States is involved.
- (2) The contract or subcontracts are to meet special requirements or emergencies, if recommended by the Committee on Government Contracts. Requests for application of this exception should be forwarded to the Washington office.
- (3) Performance of the contract does not involve the employment of persons.

e. Correction of Standard Forms. If the standard form or other form used for making the contract does not contain the required contract provision, it shall be corrected prior to execution by either party. When the contract to be entered into is to be based on the results of an invitation for bids, the invitation shall include a notice embodying the required contract provisions and, when applicable, referring to the provision of the printed form that it supersedes. Article 19 of SF-23A, March 1953 revision, should be deleted.

f. Notices for Posting by Contractors. The notices the contractor agrees to post in conspicuous places are to be furnished by the contracting officer, as requested by the contractor. In order that a bidder may anticipate his need for notices and be prepared to request an adequate quantity should he be awarded the contract, the invitation for bids should contain the following provision:

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It will be the responsibility of the successful bidder to estimate his requirements for notices he is to post pursuant to the contract provision entitled "Nondiscrimination in Employment" and to make request on the contracting officer therefor.

Contracting officers will obtain supplies of this notice from stores depots of the General Services Administration.

g. Exemption of Posting Requirement. The Committee on Government Contracts has recommended that, in certain cases, contractors may be exempted from the requirement for posting of notices (5 AR app. 135.6). Accordingly, contracting officers may exempt contractors from the requirement for posting notices when the contracts do not exceed \$5,000 and they determine that it would be impracticable to require such posting. The nondiscrimination clause shall be included in all such contracts, even though the posting requirement may be waived. In exercising this authority, contracting officers shall be guided by the following criteria:

- (1) The length of time necessary for the performance of the contract.
- (2) The number of employees working on the contract.
- (3) Whether the contract is security classified.
- (4) Whether the company receives a large number of small contracts.
- (5) Such other factors as would make the posting requirement impracticable.

In determining whether to require postings, contracting officers should give fair and impartial consideration to all factors involved. When circumstances are such that the considerations for and against posting are approximately equal, generally it would be appropriate to decide the question in favor of posting.

#### 7. Covenant Regarding Contingent or Other Fees

a. Requirement. \*-Every contract, whether advertised or negotiated, shall include a covenant against contingent fees, except as indicated below. Article 20 of SF-32, General Provisions (Supply Contract), Article 13 of SF-114, Sale of Government Property--Invitation, Bid, and Acceptance, and Article 15 of SF-23A, General Provisions (Construction Contracts), contain such a covenant. SF-19, Invitation, Bid, and Award, -\*

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\*-and SF-19A, Labor Standards Provisions, used in accordance with instructions in this chapter for formally advertised contracts, need not contain such covenant. When those forms are not used, language substantially in accordance with above-listed articles should be included in the contract. In the case of contracts for the lease of personal property for Government use, the covenant in SF-32 should be adapted for use in such contracts. Similarly, the covenant in SF-114 should be adapted for use in contracts for the lease of Government-owned property. -\*

b. Representation and Agreement Required From Prospective Contractors. Except as provided below, each prospective contractor shall be required to furnish a written representation and agreement as follows:

The bidder or contractor represents: (a) that he ☐ has, ☐ has not, employed or retained any company or person, other than a full-time bona fide employee working solely for him, to secure this contract; and (b) that he ☐ has, ☐ has not, paid or agreed to pay to any company or person, other than a full-time bona fide employee working solely for him, any fee, commission, percentage or brokerage fee, contingent upon or resulting from award of this contract, and agrees to furnish information relating thereto as requested by the contracting officer.

Note: For interpretation of the representation, including the term bona fide employee, see Code of Federal Regulations, title 41, chapter I, subchapter 1-1.5.

c. Exceptions. The representation and agreement specified above need not be required in the following cases:

(1) Advertised contracts in which the aggregate amount involved does not exceed \$25,000.

(2) Negotiated contracts in which the aggregate amount involved does not exceed \*-\$2,500-.\*

(3) Negotiated contracts for perishable subsistence supplies in which the aggregate amount involved does not exceed \$25,000.

8. Members or Delegate to Congress Clause. In every contract or agreement to be made or entered into, or accepted by or on behalf of the United States, there shall be inserted an express condition that no Member of or Delegate to Congress shall be admitted to any share



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or part of such contract or agreement, or to any benefit to arise therefrom. The foregoing condition is required by section 3741, Revised Statutes, as amended (41 U.S.C. 22). Article 19 of SF-32 covers this statutory provision and where a contract is drawn up on forms not containing such stipulations the language of article 19 must be inserted in the contract. The wording of this clause is:

No Member or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom unless it be made with a corporation for its general benefit.

Clause also included in article 16 of SF-23A.

9. Disputes Clause. When standard forms are not utilized, the disputes clause must be consistent with the Statute (41 U.S.C. 321-322) which provides for judicial review of decisions made by the head of a department in a dispute involving questions of fact, if it is alleged that such decision is fraudulent, capricious, arbitrary, or so grossly erroneous as to imply bad faith, or is not supported by substantial evidence; and further provides that no Government contract shall contain a provision making final on a question of law the decision of any administrative official.

10. Oral Quotations. When written solicitation is not practicable there may be an oral solicitation of prices from a reasonable number of dealers, provided the offer of the most satisfactory bidder is confirmed in writing and, further, that the transaction file includes a notation of the names of all dealers solicited and the prices quoted (4 Comp. Gen. 568).

This method of bid solicitation should be used only when the normal bid procedure cannot be followed and the reasons therefor are clearly defensible. The bidder must have complete knowledge of the bid requirements, including all specifications and provisions. The low bidder should be required to complete a standard bid form before award is made.

11. Telegraphic Invitations. In some very rare instances it may be necessary to solicit prices through the medium of telegrams. This procedure, however, may be used only when the matter is urgent and of utmost importance. The Comptroller General has criticized the use of telegraphic solicitations when the need for same was not evident. An adequate number of bona fide bids must be obtained and all the procedures must harmonize as nearly as

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possible with the regular procedure. The solicitation must be clear, concise, and call for immediate mail confirmation of all telegraphic bids. Any laws or regulations applicable to the particular purchase must be included by reference or otherwise in the invitation. (If the telegraphic solicitation is a readvertisement of a former invitation for bids on the regular forms, the telegraphic solicitation may incorporate by reference all the necessary terms and conditions, etc., of the former solicitation.)

12. Telegraphic Bids. Telegraphic bids will not be considered unless specifically called for in the invitation for bids. When the time allowed for submission of bids is shortened and it is deemed advisable to specifically provide for telegraphic bids, such bids must be confirmed in writing on the bid form before award is made. In such instances the following wording to be shown on the first page of the advertisement, if possible, is suggested:

TELEGRAPHIC BIDS WILL BE CONSIDERED IF  
IMMEDIATELY CONFIRMED BY MAIL ON THIS  
BID FORM.

13. Addenda to Invitation To Bid. When it is found necessary to amend some particular phase of an outstanding invitation to bid, the amendment shall be in the form of an addendum and shall be forwarded to all firms receiving the original invitation. The addendum should be dated and identified by number, such Addendum No. 1, Addendum No. 2, etc. It should properly identify the invitation to bid to which it applies by reference to the invitation number, opening date, and the name of commodity. The amendment or change should be clearly understandable to avoid confusion in the minds of bidders. The addendum should allow for modifications of bids already submitted, or for the submission of new bids, and provide for acknowledgment of its receipt by the bidder. If the opening date is postponed, it should be clearly stated; if the opening date remains unchanged, this advice should also be clearly stated.

14. Assistance to Bidder in Preparation of Bids. Bidders calling at the procurement office for help and assistance in making out their bids should be advised that the filing of the bid is the sole responsibility of the bidder, and that no assistance can be given by the procurement office staff. This does not preclude, however, the furnishing of advice with regard to the proper manner of filing a bid interpretation of the invitation, place to sign, etc.

15. Information on Arrangements for Inspection of Site. \*-Prospective bidders should be given ample time and opportunity to inspect the site prior to submission of bids. Provision for such inspection should be included in the notice or bids to prospective bidders. The-\*

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\*-The contracting officer or his authorized representative well qualified and familiar with the proposed project should accompany the bidder if necessary. It would be advisable if a definite date or dates were set up for such inspections. Care should be taken that no information is divulged that differs from that outlined in the bid specifications nor that any personal opinion is rendered that would influence the bidding. -\*

16. Aggregate Bid Provisions. When it is known to be in the best interest of the Government, invitations for bids may provide for award on a lump-sum basis. Certain commodities or contracts are of such character as to readily lend themselves to lump-sum awards and wherever lump-sum award is contemplated, bid invitations should be so drawn.

17. Partial Payment Provisions

a. Definition. Partial payments are payments made for invoiced supplies delivered and accepted, or services rendered and approved, where such supplies or services are only a part of the total contract requirement.

b. Policy. SF-23A, General Provisions (Construction Contracts), and SF-32, General Provisions (Supply Contract), adequately provide for partial payments. Such payments may be made even though the contract does not specifically provide therefor. The Forest Service shall adopt a liberal policy in making partial payments in order to assist business concerns in participating in Government procurement.

18. Bid Invitation File. The procurement office shall number bid invitations consecutively and maintain a numerical file of the invitations issued. This file should include the requisition or other authority for issuance of the invitation, a list of firms invited to bid, a copy of the tabulation of bids received, and other pertinent papers, data, and correspondence (FSH 6321.2).

19. Leeway Clause. Under contracts covering estimated quantities, delivery cannot be required of more than a reasonable excess above the estimated quantity stated in the advertisement. Ordinarily a variation of not to exceed 25 percent should suffice. In other than annual, semiannual, quarterly, or monthly contracts, and particularly in cases where fabricated articles are to be purchased, the 25 percent leeway should not be used unless it is the intention of the purchaser to make the increase or decrease at the time purchase order is drawn or within a reasonable time thereafter. Invitations should contain a clause worded somewhat as follows where justified:

The Government reserves the right to purchase not to exceed 25 percent more or less of the quantity shown under any item in this bid.



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The following policy in connection with the leeway or "over and under" clause shall be complied with except in unusual cases, such as contracts for special fabricated items such as lookout towers, ready-cut houses, or special instruments. In purchases of this kind, however, where flexibility is desirable, the inquiry must specify a definite quantity, then in another item or items state a smaller number of units which may or may not be purchased at a later date. If this procedure is followed, a statement should be included in bid to show whether units will be ordered individually or the total quantity in the optional clause ordered at one time. If the bid on additional quantity items is higher in cost than on the definite quantity ones, consideration should be given to readvertisement later on definite quantity basis.

For stock materials of standard manufacture, the "over and under" or leeway clause is optional except in cases of carload purchases and when the manufacturer's or supplier's quotation is based on the carload price and not on additional quantity items amounting to less than a carload.

#### 20. Method of Measurement and Basis of Payment Provisions.

The method of measurement and basis of payment should be clear and understandable, otherwise disputes will occur that will cause both the contractor and the Government loss of time and money. It is essential to any contract that both parties be in complete agreement on this point. Usually definite methods are set up in road and building contract schedules which have been approved by the Washington office. No deviations therefrom should be made without prior approval.

#### 21. Small-Business Size Representation

a. Written Representation. Each prospective contractor shall be required to furnish a written representation as to whether \*-or not he is-\* a small-business concern. The following form of small-business representation shall, therefore, be included in all standard contract and other forms used in making the contract. \* \* \* Pending the issuance of contracting forms reflecting the revised small-business-size representation, SF-33, Invitation, Bid, and Award (Supply Contract), and SF-114, Sale of Government Property--Invitation, Bid, and Acceptance, shall be modified by deleting the form of representation now appearing therein, and substituting: "Bidder represents that he ☐ is, ☐ is not, a small-business concern." For this purpose, a small-business concern is one which (1) is not dominant in its field of operation and, with its affiliates, employs fewer than 500 persons, or (2) is certified as a small-business concern by the Small Business Administration. \*-SF-21, Bid Form (Construction Contract), shall in addition include: "and (3) with-\*

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20. Method of Measurement and Basis of Payment Provisions. The method of measurement and basis of payment should be clear and understandable, otherwise disputes will occur that will cause both the contractor and the Government loss of time and money. It is essential to any contract that both parties be in complete agreement on this point. Usually definite methods are set up in road and building contract schedules which have been approved by the Washington Office. No deviations therefrom should be made without prior approval.

21. Small-Business Size Representation

a. Written Representation. Each prospective contractor shall be required to furnish a written representation as to whether he is or is not a small-business concern (FSH 6322.22, item 3). Where these forms are not used, the wording of the representation thereon shall be used. See Code of Federal Regulations, title 13, part 121 (21 F. R. 9709), as amended, which contains the detailed definition and related procedures.

b. Determination of Small-Business Status for Government Procurement. A small business concern for the purpose of Government procurement, unless otherwise defined, is a concern that (1) is independently owned and operated, is not dominant in its field of operation and, with its affiliates, employs fewer than 500 persons, or (2) it is certified as a small-business concern by the Small Business Administration (SBA). \*-However, for the purpose of a specific Government procurement the size standards are increased by 25 percent whenever the concern agrees to perform or cause the contract to be performed substantially in areas of substantial labor surplus. -\*

Any business concern in the construction industry is small if its average annual receipts for the preceding 3 fiscal years do not exceed \$5 million.

The representation of a concern that it is a small business, in the absence of a written protest, shall be deemed prima facie evidence that such concern is a small business for the purpose of the specific procurement involved.

c. Protest of Small-Business Status. A bidder or the contracting officer may, prior to award, question the small-business status of the apparently successful bidder by sending a written protest to the contracting officer and

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to the appropriate SBA regional office. If such a protest is received in connection with a procurement reserved for or involving preferential treatment of small business or one involving equal bids, award should be withheld pending a decision by the SBA. Although SBA is required to determine the status of the concern involved within 10 working days after receipt of a protest, if such delay would adversely affect program operations, the contracting officer should so notify the SBA Regional Office. In such case, the SBA will expedite its determination as necessary to meet program needs.

22. Federal, State, and Local Taxes. All contracts entered into as a result of formal advertising, and negotiated contracts where appropriate, will contain the following tax clause of exhibit 6 from 5 AR 227:

FEDERAL, STATE, AND LOCAL TAXES

(a) As used throughout this clause, the term "tax inclusive date" means the date of negotiated contracts and the date set for the opening of bids for contracts entered into through formal advertising. As to additional supplies or services procured by modification to this contract, the term "tax inclusive date" means the date of such modification.

(b) Except as may be otherwise provided in this contract, the contract price includes all Federal, State, and local taxes and duties in effect and applicable to this contract on the tax inclusive date, except taxes from which the Government, the Contractor, or the transactions or property covered by this contract are then exempt. Unless specifically excluded, duties are included in the contract price.

(c) (1) If the Contractor is required to pay or bear the burden (i) of any tax or duty, which either was not to be included in the contract price pursuant to the requirements of paragraph (b), or was specifically excluded from the contract price by a provision of this contract; or (ii) of an increase in rate of any tax or duty, whether or not such tax or duty was excluded from the contract price; or of any interest or penalty thereon, the contract price shall be correspondingly increased: Provided, That the Contractor warrants in writing that no amount for such tax, duty, or rate increase was included in the contract price as a contingency reserve or otherwise: And provided further, That liability for such tax, duty, rate increase, interest, or penalty was not incurred through the fault or negligence of the Contractor or its failure to follow instructions of the Contracting Officer.

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(2) If the Contractor is not required to pay or bear the burden, or obtains a refund or drawback, in whole or in part, of any tax, duty, interest, or penalty which (i) was to be included in the contract price pursuant to the requirements of paragraph (b), (ii) was included in the contract price, or (iii) was the basis of an increase in the contract price, the contract price shall be correspondingly decreased or the amount of such relief, refund, or drawback shall be paid to the Government, as directed by the Contracting Officer. The contract price also shall be correspondingly decreased if the Contractor, through its fault or negligence or its failure to follow instructions of the Contracting Officer, is

(Continued on next printed page)

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(5) No adjustment of less than \$100 shall be made in the contract price pursuant to this paragraph.

(d) Unless there does not exist any reasonable basis to sustain an exemption, the Government agrees upon request of the Contractor, without further liability except as otherwise provided in this contract, to furnish evidence appropriate to establish exemption from (i) any Federal tax, which the Contractor warrants in writing was excluded from the contract price, or (ii) any State or local tax: Provided, That evidence appropriate to establish exemption from duties will be furnished, and Government bills of lading will be issued, only at the discretion of the Contracting Officer. In addition, the Contracting Officer may furnish evidence appropriate to establish exemption from any tax that may, pursuant to this clause, give rise to either an increase or decrease in the contract price.

(e) (1) The contractor shall promptly notify the Contracting Officer of all matters pertaining to Federal, State, and local taxes and duties that reasonably may result in either an increase or decrease in the contract price.

(2) Whenever an increase or decrease in the contract price may be required under this clause, the Contractor shall take action as directed by the Contracting Officer, and the Contract price shall be equitably adjusted to cover the costs of such action, including any interest, penalty, and reasonable attorney's fees.

#### 6322.2 - Requirements--Bid Invitations for Public Works Contracts

6322.21 - Desirability of Contracting for Public Works. Outlined below are some of the various influencing factors to consider when determining whether to use force account or have work performed under contract.

The main advantages claimed for force account work are that it eliminates contractor's profit; permits flexibility and modification of plans and specifications; provides saving in cost of inspection; eliminates necessity of preparing contracts on projects performed during "off fire season," and provides opportunity to extend employment of key seasonal employees. However, careful analysis should be made to determine whether these advantages are realistic and if they are outweighed by the disadvantages.



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Contractor's profit may not actually be saved, as revealed by experience which shows the cost of force account work running higher than that for similar work performed under contracting. Although ease of modifying plans and specifications is a factor in certain types of work, it often results in careless preliminary investigations and inadequate designs and plans, which result in poor-quality work.

Insofar as inspection is concerned, careful supervision by competent personnel must be maintained at all times, regardless of whether contracting or force account is used. In carrying out work under force account, there is no firm figure of the total cost of the project until it is complete and in many cases the actual total cost to the Government may never be known. The estimated cost, which often is exceeded, must be relied upon.

Based upon experience of the Forest Service and that of all major contracting agencies, the contract system generally provides the best and most efficient method for carrying out construction of roads, trails, bridges, dams, buildings, campground structures; large sale-area betterment and slash-disposal projects, range reseeding, aerial photography, aerial reseeding, aerial spraying, range-improvement construction and maintenance, campground maintenance, watershed improvements such as contour terracing and seeding, and similar types of work. Projects that are small in scope, simple, or of a nature such that it is difficult to evaluate and develop complete plans and specifications far in advance, may be advantageously performed by force account.

6322.21a - Force Account Versus Contracting. In evaluating force account as opposed to contracting, the following factors should be considered:

1. Availability to the Forest Service of labor and qualified supervisory personnel for force account. This is frequently the limiting factor in labor shortage areas.
2. The wages paid Forest Service employees are at times below the prevailing union wage rates in the area. On projects of any size it might be necessary to pay union wage rates, therefore wage rates used in comparison should be considered accordingly.
3. Necessary equipment might initially be rented at rates lower than those ordinarily paid by private industry, but pressure might be brought to bear later which would force payment of higher rates. The same consideration should be given as outlined in item 2 as to any comparison.
4. The need for and expenses incident to establishing suitable quarters such as work camps for Forest Service employees.

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5. Problems incident to subsistence of Forest Service employees.
6. Difficulties and cost of providing service of supply to force account projects, especially in remote areas.
7. Adequate safety programs with the attendant supervision including the handling of compensation for injury cases.
8. Paperwork incident to recruitment, employment terminations, payrolls, compensation cases, meal records, etc., on force account work with the attendant clerical time.
9. Professional or technical day-to-day supervision.
10. Purchase or rental of equipment not available or owned by the Forest Service, and maintenance thereof.
11. Urgency of the project and the possibility of requiring a great deal of overtime.
12. The ability of private industry to perform better work more economically.

6322.21b - Factors To Consider in Determining Desirability of Contracting. Definite determination should be made prior to solicitation of bids that the bidding procedure is feasible and desirable and affords the most economical method of accomplishing the work to be done. Some of the factors to be considered are:

1. Comparison of force account versus contracting.
2. Nature and size of project.
3. Complications which will ensue, if any, and if the Davis-Bacon Act and Miller Act are applicable.
4. Time limit on completion of project.
5. Location of project--accessibility.
6. Availability of qualified contractors in project area.
7. Time limitation on obligation of funds.
8. Whether contract procedure is logical and desirable from a contractor's viewpoint.
9. Availability of good competitive bidding.

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When, after considering the foregoing factors, it is decided to contract a project, the operating unit must give the procurement office sufficient time to enable taking appropriate contracting action. For formal contracts (in excess of \$2,000) the operating unit will notify the procurement office at least 60 days in advance of the planned starting date of the project to permit sufficient time for determining job classifications for the contractor's employees, obtaining mandatory wage rate determinations through channels from the Labor Department, issuing bid invitations, and making awards prior to date set for commencing the project. Requests for wage rate determinations ordinarily must be submitted to the Labor Department 30 days in advance of the date schedule for advertising.

Where a proposed construction of public works contract is estimated to exceed \$2,000, advertising for formal contract is required using applicable bid forms. Complete plans and specifications should be prepared before circulating the invitation for bids. Preparation of specifications for this type of work usually requires the assistance and technical advice of engineering.

6322.22 - Preparation and Use of Standard Bid Forms for Public Works Contracts. \*-Use of the forms as described under this code is mandatory for fixed-price contracts entered into under formal advertising for construction, alteration, or repair of public buildings or works, except for contracts for construction, alteration, or repair of vessels.

Use of the forms is optional for negotiated contracts; however, in the interest of uniformity, these forms are to be used for contracts which were entered into on the basis of competitive bids but which are termed negotiated contracts because the requirements of formal advertising are not fully met.

For complete list of standard bid forms, see FSH 6325.

1. SF-19, Invitation, Bid, and Award (Construction, Alteration, or Repair), and SF-19A, Labor Standards Provisions. SF-19 shall be used for contracts of \$2,000 or less. SF-22 also may be used. For contracts estimated to exceed \$2,000, but not to exceed \$10,000, SF-19 and SF-19A shall be used. SF-22 also may be used. The following language shall be inserted in the space provided in the bid portion of SF-19 prior to issuance of the invitation:

The undersigned further agrees, if this bid exceeds \$2,000, TO COMPLY with the Labor Standards Provisions Applicable to Contracts in Excess of \$2,000 (Standard Form 19A) in lieu of those in Provision 10 hereof; TO PAY not less than the minimum hourly rates of wages set forth in the-\*

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- \*-specifications; and TO FURNISH a performance bond in an amount equal to 100% and a payment bond in an amount equal to 50% of the contract price with surety or sureties acceptable to the officer awarding the contract.

The specifications shall contain the appropriate wage rate determination of the Secretary of Labor where the contract exceeds \$2,000.

2. SF-20, Invitation for Bids (Construction Contract). For contracts estimated to exceed \$10,000, SF-20 through SF-23A shall be used. SF-20 may be used as a cover sheet on which are listed all of the attachments which form the complete bid invitation. In addition, space is provided for necessary information for the bidder which will not form a part of the contract specifications or conditions but is required by him in submitting his bid. SF-20 may be given wide circulation to notify all prospective bidders that bids are being solicited. Plans, specifications, and sample contracts for construction of roads, buildings, bridges, and other major projects which are bulky to handle and expensive to prepare should not be sent unsolicited to long lists of prospective bidders. When so used, SF-20 should include (1) name and location of project, (2) department and bureau, and (3) time and place of opening. -\*

a. Information Regarding Bidding Material, Bid Guarantee, and Bonds. Information to be shown will include the location at which bid forms and plans and specifications may be obtained (if not attached), necessary payment required therefor; the amount of bid bond required with the bid, with instructions that in lieu of bond a certified check or postal money order drawn payable to the Forest Service, USDA, is acceptable; the amount of performance and payment bond to be required by the successful bidder; whom to contact and when, for inspection of the site; and any data needed by the bidder to enable him to obtain the proper forms, and to prepare and submit his bid. The information would supplement that in SF-22, when attached to the SF-20.

b. Description of Work. The work will be described sufficiently to show clearly the scope of the job. In addition, following the description of the work, there must be clearly stated the specifications, special conditions, drawings, etc., which form a part of the bid invitation and are to be a part of the resultant contract. These should be listed by title and inclusive page numbers or other identification so that there may be no question as to what papers form a part of the bid and contract.

c. Liquidated Damages (FSH 6322.23, item 8)

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d. Partial Payments. Partial payments may be made, if desired, in accordance with clause 7 of SF-23A. Appropriate reference for or against partial payments should be made on SF-20. Unless there is good and sufficient justification for not doing so, partial or progress payments should be made.

e. Performance Time. Time for commencing and finishing the work should be stated on SF-20 unless accompanied by the bid invitation or SF-21.

3. SF-21, Bid Form (Construction Contract). It is customary to complete SF-21, to the extent feasible, before sending it with the invitation for bids. As a general rule, the block for the address to which bids are to be sent, description of work, location, acceptance time, commencement and completion of work time, bid number, and directions for submitting bids, should be completed; and the schedule of items should be included by a reference thereto on the face of the bid form.

\*-The small business representation shown below which appears in the January 1959 edition of this form should be used:

The undersigned represents (check appropriate boxes):

That he ☐ is, ☐ is not, a small business concern. For this purpose, a small business concern is one that (a) is independently owned and operated, (b) is not dominant in its field of operation, and (c) with affiliates, had average annual receipts for the preceding three years of \$5,000,000 or less. (See Code of Federal Regulations, Title 13, Part 103, as amended, for additional information.)-\*

When a single bid price is required, that price should be indicated by the bidder in the space provided on SF-21. However, in most instances each integral portion of the job should be priced separately. In such event, bidders should be referred to a "Schedule of Items" which will be attached to and made a part of the bid papers by appropriate reference. The schedule of items on which the bidder inserts his bid is prepared by tabulating the items of work correlated with exact item numbers and titles of work descriptions contained in the "Construction Details" of the specifications and showing the estimated quantity of each item of work in a form that will permit the contractor to prepare his bid. SF-23 and SF-23A are to be used for the contract. The schedule of items should be prepared as a separate attachment to the invitation for bids so that it may be easily copied and made a part of the contract.

4. SF-22, Instructions to Bidders (Construction Contract).  
Use of this form is optional. \*-Ordinarily it should be provided the bidder with SF-19 or SF-20. -\*



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5. SF-23, Construction Contract. \*-This form should be attached to the invitation for bid as a sample or otherwise made available to bidders. The articles included in SF-23A are a part of all contracts. All other specifications, forms, schedules, drawings, plans, and/or conditions, to be made a part of the contract, should be specifically listed on SF-23. The date of contract on page 1 should be filled in as the date on which award was made. SF-25 and SF-25A must not predate this. They should be the same date as the contract or subsequent thereto. -\*

6. SF-23A, General Provisions (Construction Contracts). This form contains the general provisions and should be used with SF-23.

7. SF-24, Bid Bond. This form, when required by the bid invitation, must be executed by the bidder and submitted with his bid, if his bid guarantee is in the form of a bid bond.

All bid invitations for construction in excess of \$2,000 shall require the furnishing of a bid bond or other guarantee that the successful bidder will furnish the necessary contract bonds and execute a contract. The bid bond, or other guarantee, shall be in an amount, determined in advance of advertising for bids and so stated in the bid invitation, equal to the probable difference between the first and second low bids so that the interest of the Government will be protected more fully in event of default of the low bidder. Usually 5 percent of the bid price will suffice for the larger construction contracts. The contracting officer may waive bid guaranty requirements for bids of less than \$2,000 by so stating in the bid invitation, or excluding bid guaranty requirements where the cost is anticipated to be less than \$2,000. However, bid bond or other guarantee should be required whenever a performance bond is being requested. Certified or cashier's checks, postal money order, negotiable United States bonds or notes, and currency are acceptable in lieu of a bid bond.

8. SF-25, Performance Bond. The Miller Act (40 U.S.C. 270a) requires performance bonds which are to be obtained on SF-25 or SF-27, Performance Bond (Corporate Co-Surety Form), in the full amount of the contract. When the amount of the contract is \$2,000 or less, the contracting officer shall determine whether a performance bond will be required, and if so, in what amount. Only individual or corporate surety bonds are acceptable. The blank form need not accompany the bid. It will be prepared after opening and acceptance of bid. (Individual surety bonds will necessitate checking of financial standing on each individual surety at 1-year intervals.)

9. SF-25A, Payment Bond. As required by the Miller Act (40 U.S.C. 270a), payment bonds are to be requested on SF-25A or SF-27A, Payment Bond (Corporate Co-Surety Form) in the



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sliding-scale amounts stated in the act. (For contracts of not more than \$1,000,000 in amount, a 50 percent payment bond is required.) Only individual or corporate surety bonds are acceptable. The blank form need not accompany the bid. It will be prepared after opening and acceptance of bid.

10. Optional Report Forms

a. Financial Statement. Report Form "Contractor's Financial Statement." This report, which has been approved and recommended by the Joint Conference on Construction Practices, may be requested if desired. If requested, it should be referred to on SF-20.

b. Experience Report. Report Form "Experience Questionnaire." This report, approved and recommended by the Joint Conference on Construction Practices, is optional. If requested, it should be referred to on SF-20. It may not be desirable for small jobs.

c. Plan and Equipment Report. Report Form "Plan and Equipment Questionnaire." This report, approved and recommended by Joint Conference on Construction Practices, is optional. If requested, it should be referred to on SF-20. It is recommended where the information will be of value and is not otherwise readily available.

6322.23 - Public Works Contracts--Bid Invitation Elements. There follows a detailed explanation of each bid invitation element:

1. General Requirements Section. These are the specification requirements of a general nature that apply to all times of construction listed in the contract specifications. When an agency is engaged in a regular program of construction, they are usually prepared as standard requirements for all similar construction. General requirements include such items as:

- a. Definitions.
- b. Interpretation of quantities in bid schedule.
- c. Control of work and material.
- d. Scheduling prosecution and progress of work.
- e. Measurement and payment of work.

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- f. Removal of structures and obstructions.
- g. Final cleaning up, etc.
- h. A notice as to which officer will issue notices.
- i. A list of codes, regulations, and ordinances to be complied with.
- j. Definition and use of plans and specifications.
- k. Notice of contractor's responsibility for work.
- l. Notice relative to noninterference with other Government contracts or work.
- m. Requirements for contractor submitting a schedule of the estimated cost of the main branches of work, for use in determining the basis of partial payments.
- n. Notice of time to proceed and complete contract.
- o. Notice relative to use or nonuse of Government facilities while on job.
- p. Protection of public property.
- q. Removal of debris and cleaning up.
- r. Requirement of notice by contractor when job is completed and ready for final inspection.
- s. Guarantee against faulty material and workmanship.
- t. Mandatory clauses to be included as applicable:
  - (1) Fair Employment Practice Clause.
  - (2) Davis-Bacon Act Requirement.
  - (3) Miller Act Requirements (Bond).

The general requirements should be specific regarding the authority of the designated representative to instruct the contractor and render decisions. Such requirements will comply with the responsibilities outlined in FSH 6326.1, item 1.

General requirements have been developed for specific work programs such as road and bridge construction contracting.

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These general requirements will be maintained separately in a binder to be used in connection with the various types of contracting. Other general requirements covering specific programs of work will be developed for inclusion in the same binder. No change will be made in the general requirements without prior approval by the Washington office. Recommended changes will be submitted to the Washington office for consideration.

2. Special Conditions. This section of the invitation for bids and contracts for construction shall include those conditions which supplement the general provisions of SF-23A, General Provisions (Construction Contract). No special condition may conflict with or interpret the general provisions of SF-23A without prior approval of the Washington office. Special conditions generally include such items as:

- a. Rates of wages.
- b. Liquidated damages.
- c. Subcontracting.
- d. Firefighting equipment required.
- e. Fire regulations.
- f. Statement for Kickback Law (Copeland Act).
- g. Payroll certificate.
- h. Small business set-aside.
- i. Safety codes.
- \*-j. Buy-American Act (FSH 6322.1). -\*

If these items are included elsewhere, such as in the general requirements, it would not be necessary or advisable to repeat them under special provisions.

When necessary, adequate fire control provisions should be included. The Division of Fire Control and the forest supervisor will be consulted to determine the amount and type of firefighting equipment and spark arresters needed, and period or time of year when required. It will be the responsibility of the contractor, when required, to furnish and maintain firefighting equipment and spark arresters and to employ a trained fire guard acceptable to the forest supervisor.

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The items listed above are indicative only and not all-inclusive. In some contracts it may be necessary to enlarge on the number of items; others will not need such inclusion. The specifications should be closely reviewed by the contracting officer to determine that all the requirements and specifications are applicable to the bid for the job being bid upon. Particular attention should be given to special conditions which are usually added to standard specifications for ordinary bids, to see that they are clear, will result in a meeting of the minds on contract provisions, and might supplement but will not conflict with or interpret SF-23A.

3. Construction Details. These are the technical specifications for each item listed in the schedule of items of the bid invitation and contract. Such construction details should be titled and numbered exactly as the item is to appear in the schedule of items, and include the following:

- a. Description of the item of construction.
- b. Construction methods.
- c. Method of measurement.
- d. Basis of payment.

4. Supplemental Specifications. An agency that is engaged in a regular program of construction will usually prepare the general requirements and construction details as standard specifications for all recurring construction work. Such standard specifications are usually reproduced in quantity for attachment as necessary to the invitation for bids and contract. For each contract, however, there may be peculiarities of construction that require either deviation from the standard specifications or additions thereto. These are ordinarily included in an attachment called Supplemental Specifications which, as the term implies, supplement the standard specifications. Provision should be made in the General Requirements that where there is a conflict between the supplemental specifications and other contract specifications, the supplemental specifications shall govern.

5. Plans and Drawings. Plans, drawings, and specifications are prepared by employees of the Federal Government or by contract to a non-Federal person or agency. Plans and drawings should be clearly identifiable by sheet numbers and titles and be so identified in the bid invitation and contract.

6. Specified Time Allowance for Performance. The time to allow for the construction of a project should be worked up on a realistic basis. Adequate time should be allowed, since liquidated

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damage is usually included and any arbitrary curtailment in time will influence the bidding and result in higher cost to the Government. Various factors should be taken into consideration such as weather conditions normally prevalent in the area at the time; inaccessibility; type of work involved or expected to be encountered. The basis should be worked up on the number of working days, taking into consideration Saturdays, Sundays, legal and State holidays and then converting to calendar days, since the calendar day should be used in bid and contract language.

If contractor is to be required to furnish a work schedule, which will set forth his estimates on the time elements for the different phases of construction, this fact should be clearly shown in the invitation for bid.

7. Provision for Subcontracts. The purpose of bidding and subsequent contracts is to engage competent and reliable firms in the respective fields of work on the most economical basis, and to provide all with equal opportunity through competitive bidding. Subcontracting is recognized in industry to varying degrees, depending upon the type of construction. Contractors will be permitted to subcontract on road projects up to 50 percent of the original contract value after deducting the values of any designated specialty items. Subcontracting on other types of contracts should be permitted to the extent the practice is normally followed in private industry. The contracting officer should decide when and to what extent to permit subcontracting and whether it would be to the best interests of the Government. This should be incorporated in the general requirements in order that the contractor may prepare his bid accordingly. The contractor should make written request to the contracting officer for permission to subcontract, giving the name of the subcontractor, experience, and any further information the contracting officer may request. Written consent of the contracting officer will not relieve the prime contractor or his sureties from liability under the contract to perform the work as required.

\*-8. Liquidated Damages. The use of liquidated damages provisions in contracts, including construction, is not mandatory. Liquidated damages provisions for construction contracts are contained in the Termination for Default, Damages for Delay, and Time Extensions clauses of both SF-19, Invitation, Bid, and Award (Construction, Alteration, or Repair), and SF-23A. See FSH 6322.34 for supply contracts.

Even though the liquidated damages provision is not mandatory, consideration should be given to the advantages or disadvantages of including it in construction contracts. This determination should be made on an individual contract basis. -\*



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8. Liquidated Damages. The use of liquidated damages provisions in contracts, including construction, is not mandatory. Liquidated damages provisions for construction contracts are contained in the Termination for Default, Damages for Delay, and Time Extensions clauses of both SF-19, Invitation, Bid, and Award (Construction, Alteration, or Repair), and SF-23A. See FSH 6322.34 for supply contracts.

Even though the liquidated damages provision is not mandatory, consideration should be given to the advantages or disadvantages of including it in construction contracts. This determination should be made on an individual contract basis.

6322.24 - Labor Provisions for Public-Works Contracts

6322.24a - Wage Rates (Davis-Bacon Act). The Davis-Bacon Act (40 U.S.C. 276a) requires that the advertised specifications for every contract for construction, alteration, or repair of public buildings or works, including painting or decorating buildings, in excess of \$2,000 shall contain a provision stating the minimum wages to be paid laborers and mechanics. \*-The terms "building" or "work" generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. Buildings and works include, but are not limited to:

Roads	Airports
Trails	Canals
Bridges	Scaffolding
Dams	Drilling
Tunnels	Blasting
Sewers	Excavating
Water Systems	Clearing
Water Wells	Landscaping
Powerlines	Telephone Lines

Provisions of the Davis-Bacon Act do not apply to aircraft repair. Applicability of the provisions of the Davis-Bacon Act is dependent upon the actual contract price and not upon estimates as to whether the contract work is in excess of \$2,000, the statutory minimum. Although said provisions were included in a contract where the price is less, there is no requirement for compliance therewith, public officers not having legal authority to include provisions contrary to law (18 Comp. Gen. 394). -\* Whenever it is believed the contract amount may exceed \$2,000, provision should be made in the request for bids for compliance with the act. The labor-standards provisions of SF-19a, Labor Standards Provisions, is sufficient to require such compliance.

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The Davis-Bacon Act does not apply to the following types of Forest Service work, since they do not come within the category of construction, alteration, and/or repair of public works: range reseeding, tree planting, tree pruning, slash disposal, snag felling, juniper eradication, ribes eradication, hazard reduction, \*-and similar type forestry work. -\*

1. Determination of Rates. The minimum wages are determined by the Secretary of Labor upon receipt of a properly executed Department of Labor Form DB-11, Request for Determination. Current Department of Labor instructions provide that wage rates will be supplied within 30 calendar days after receipt of the request. Requests must be submitted to the Washington Office sufficiently in advance of the date scheduled for advertising to allow for referral to the Department of Labor and a full 30 days after receipt by that Department. Requests will be submitted in duplicate. The original will be backed up with carbon paper; that is, carbon paper will be placed so that the typing will also appear on the reverse of the original. Wage rates expire 90 days after issuance date. If extension are desired they must be requested before expiration of the original request. The request for extension will be submitted in duplicate, with the original backed up with carbon paper as explained above. The form will be completed \*-the same as original request except the statement "Review and extension of Wage Rate Determination No. \_\_\_\_\_" will be shown in the "Description of Work" block. -\* It must not be assumed that the wage rates on extensions will be the same as on the original.

2. Inclusion of Rates in Special Conditions. Minimum wage rates obtained shall be included in the advertised specifications by use of the following clause:

The rate of wages to be paid mechanics and laborers employed directly on the site of the work shall be in accordance with the provisions of clause 1 of SF-19A and in accordance with the terms of the regulations promulgated by the Secretary of Labor (regulation 503, dated September 30, 1935). The following is hereby found to be the prevailing rate of wages for the crafts specified:

(Insert wage determinations)

Any class of laborers and mechanics not listed in the preceding paragraphs which will be employed on this contract, shall be classified or reclassified conformably to the foregoing schedule, and a report of the administration action taken in such cases shall be transmitted by the agency to the Secretary of Labor.

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In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question, accompanied by the recommendation of the contracting officer, shall be referred to the Secretary of Labor for final determination.

- \*-When transmitting reports of administrative action taken, or requesting consideration of classification or reclassification, date of bid opening must be furnished. -\*

3. Use of Wage Determination. If the contract for which wage determinations were obtained has not been awarded within 90 calendar days from the date of the original wage determination, new wage determination must be requested, \*-and the requirements re-advertised. -\* All actions by the Secretary of Labor changing or modifying original wage determinations prior to the award of the contract shall be applicable thereto, except that modifications received later than 5 days before the opening of bids shall not be effective if the award is made within 30 days after the opening of bids or 90 days from the date of the original wage determination, whichever is the earlier.

4. Apprentice Wage Rates. Department of Labor regulations require that invitations to bid on construction contracts over \$2,000 include a provision regarding employment of apprentices. Labor-standards provision, clause 3 of SF-19A, contains appropriate wording.

It is not necessary to specifically request apprentice wage rates, as the Department of Labor will automatically add wage rates for apprentices to the Department's application for wage rates for the various crafts, where such are on file. When a contractor proposes to employ apprentices for whom wage rates have not been stated in the contract, requests for approval of the wage rates should be submitted through channels to the Office of Plant and Operations, which will obtain approval from the Department of Labor. \*-Date of bid opening is to be furnished with request. -\*

5. Notice to Bidders as to Determination of Local Conditions, Applicable Laws, Regulations, Etc. The Secretary of Labor has asked that contracts subject to the Davis-Bacon Act contain a provision to protect contractors from financial loss and to protect the Government from claims because of misunderstandings as to contracts and to call attention to applicable laws, regulations, etc. Therefore, all invitations to bid, which are in contemplation of contracts subject to the Davis-Bacon Act, shall contain the following provision:

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While the wage rates shown are the minimum hourly rates required by the specifications to be paid during the life of the contract, it is the responsibility of bidders to inform themselves as to the local labor conditions such as the length of workday and workweek, overtime compensation, health and welfare contributions, labor supply, and prospective changes or adjustment of wage rates. The contractor shall abide by and conform to all applicable laws, Executive orders, rules, regulations, and orders of Federal agencies authorized to pass upon and determine wage rates. No increase in contract price shall be allowed or authorized on account of payment of wage rates in excess of those listed herein.

6322.24b - Anti-Kickback Law (Copeland Act)

1. Explanation. The Anti-Kickback Law (18 U. S. C. 874 and 276c) makes it unlawful to prevent anyone employed in the construction, alteration, or repair of buildings or works financed in whole or in part by the United States from receiving the rates of pay legally due.

This act, unlike the Davis-Bacon Act, applies regardless of the contract amount. It applies not only to construction work as used in the ordinary sense, but also to altering, remodeling, painting, and decorating of buildings. It does not apply to contracts or the installation of machinery, machine tools, or other apparatus, unless the installation involves a substantial amount of construction, alteration, or remodeling.

2. Contract Provisions. Clause 10 of SF-19 and clause 5 of SF-19a contain the necessary contract provisions on the nonrebate of wages. If the work is arranged for by negotiation, this same language should be made a part of the specifications and the resultant contract. See item 19, FSH 6324.1, for instructions to be given contractors upon award of contract and requirements for administration of this contract provision.

6322.24c - Fair Labor Standards Act. In order to avoid any misunderstanding by construction contractors, the following clause shall be made a part of all "Special Conditions" in construction contracts awarded after this date.

Fair Labor Standard Act--The contractor's attention is directed to the Fair Labor Standards Act of 1938 (52 Stat. 1060) and any amendments thereto.

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It will be noted that the Forest Service intends only to call attention to the Fair Labor Standards Act, not make it a part of the contract or attempt to interpret or administer it.

Contractors or contractor employees who inquire concerning applicability or interpretation of the Fair Labor Standards Act shall be advised that ruling concerning such matters fall within the jurisdiction of the Department of Labor, and shall be given the address of the appropriate Regional Office of the Wage and Hour and Public Contracts Divisions of the Department of Labor. Also see article 5 on Form 6300-3, Specifications for Construction of Forest Development Roads and Bridges--General Requirements.

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than one service requirement statement is necessary, reference should be made to the appropriate item. If detailed separate specifications are necessary, they should be included here, written in clear, concise language so that all prospective bidders will understand what is required.

For instructions on specifications, refer to procurement specifications and clauses (FSH 6331).

SF-33 should be mailed or delivered to prospective bidders with all attachments such as separate specifications, when required, special conditions referred to in item b above, and any other required papers, stapled together permanently to avoid loss.

2. Supply-Contracts Forms (FSH 6325.4)

6322.32 - Assembly of Bid Invitation Material

1. Arrangement of Invitations for Bids. It is desirable to achieve standardization of arrangement of invitations for bids to the extent practicable so that bidders may become familiar with a uniform format and assembly of bid invitations generally may be facilitated. The following sections of the invitation for bids should generally be arranged in sequence and include information as stated below.

a. SF-33, Invitation, Bid, and Award (Supply Contract). Since the present form provides so little space in the "Schedule," the available space should ordinarily contain a block titled "Address Bids To" with the appropriate mailing address shown. There should also be shown in this space the listing of attachments which are to form a part of the bid invitation and resultant contract. This can be done by statement as follows:

The following attachments hereto form a part of this invitation for bids and any resultant contract:

b. Instructions to Bidders. The first page of the attachments to SF-33 should ordinarily contain any instructions to bidders necessary to supplement those appearing on the reverse of the form, that is, identification of bid envelopes, directions for inspection of contract site, submission of samples, etc. Such instructions should include only those necessary to enable the bidder to submit his bid and should not include contract provisions.

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c. Special Provisions. This section of the bid invitation should include any provisions considered necessary to supplement those appearing in SF-32, General Provisions (Supply Contract). They would include such provisions as liquidated damages, and delivery-time requirements. No change in or substitution for SF-32 may be made without prior approval of the Washington office.

d. Schedule of Items. Ordinarily, the items to be purchased will be listed on SF-36, Continuation Sheet (Supply Contract). The item description will either include the necessary specifications or refer thereto. When Federal specifications are referenced, the item description should be sufficient to indicate to the bidder the size, type, and class of item in general terms so that he may readily determine if the item is one that he can furnish, in which case he can refer to the Federal specification for detailed requirements.

e. Specification (FSH 6332)

## 2. Grouping of Similar Items

a. General. In many instances, there is an advantage to both the Government and the bidders if items specified in an invitation for bids are grouped so as to allow prospective bidders to bid on a group of related items rather than on individual items of relatively low value. When the individual items are fairly substantial in amounts, however, bidders should be given the option of bidding on such items in addition to a lump-sum bid on a group of related items.

b. Grouping by Class of Item. When grouping items by class, the commercial trade practices of commodity distribution should be followed to the extent feasible.

## 6322.33 - Rental of Equipment

1. Policy. When the need for equipment is so limited as to make it uneconomical to purchase, such equipment may be rented or borrowed.

2. Advertising. Section 3709, Revised Statutes, requiring advertising for supplies or services, is applicable to rental of equipment (18 Comp. Gen. 579). Accordingly, instructions in this chapter are to be followed with regard to advertising.

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\*-mail (or by telegraph, if authorized) and (b) it is determined by the Government that late receipt was due solely to either (1) delay in the mails (or by the telegraph company, if telegraphic bids are authorized) for which the bidder was not responsible or (2) mishandling by the Government after receipt at the Government installation. However, a modification which is received from an otherwise successful bidder and which makes the terms of the bid more favorable to the Government will be considered at any time it is received and may thereafter be accepted. -\*

c. Special Provisions. This section of the bid invitation should include any provisions considered necessary to supplement those appearing in SF-32, General Provisions (Supply Contract). They would include such provisions as liquidated damages, and delivery-time requirements. No change in or substitution for SF-32 may be made without prior approval of the Washington office.

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6322.33

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6322.33 - Rental of Equipment

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2. Advertising. \*-See FSH 6321.1. -\*

(Continued on next printed page)

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3. Written Contract. As a matter of good business, rental or loan agreements should be covered by a written order, contract, or agreement, regardless of the amount involved, thereby fixing the responsibilities of the parties concerned.

4. Special Contract Provisions

a. Operating Supplies. In the case of motorized equipment, the specifications should state clearly whether the Government will furnish gasoline, fuel oil, lubricating oil, etc.

b. Repairs by Government. The contract should be specific as to which party shall be responsible for repair and maintenance of the equipment and the liability and extent of loss assumed by each. If the Government is to assume this responsibility, it is desirable to establish a monetary limit of liability therefor, such as not to exceed the value of the equipment being rented. The contract may provide for the assumption of liability for the equipment during the period it is in the Government's possession. Funds may be expended by the agencies for necessary repairs so long as the property continues in use by the Government. After the property has served its purpose, however, if there is damage to or loss of the property, a claim for such damages or loss must be referred to the General Accounting Office for settlement unless the obligation of the Government is liquidated by the contract. For example, the contract may place a value on the property to be paid in the event of total loss.

c. Rental Period. The rental should be for a definite period of time, which should not extend beyond the time for which an appropriation is available. However, if the basis of payment is in terms of hours, days, etc., requirements may be stated in terms of estimates when the exact requirements are not known.

5. Purchase Option in Equipment Rental Contracts. When there is reason to believe that conditions may require continued use of the equipment to the extent that rental would be uneconomical, bidders may be asked to indicate in their bids at what price they would be willing to sell the equipment should the Government elect to purchase at a later date prior to the expiration of the rental agreement. Bidders should be asked also to indicate how much of the rental price may be applied against the purchase cost. Award of bids for rental-purchase of equipment should be based entirely upon the price and conditions of rental, as the purchase may or may not be effected (15 Comp. Gen. 1136).



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6322.34 - Specific Requirements for Supply Bid Invitations. There follows a detailed explanation of each special requirement for supply bids.

1. Place of Delivery Acceptance by Government

a. General Rule. Invitations for bids should specify destination prices only, whenever practicable. In any event, however, to avoid confusion, the point at which the Government will accept delivery must be stated clearly and concisely.

b. F.o.b. Shipping Point and Destination. In some instances it may be to the advantage of the Government to solicit prices on the basis of both f.o.b. shipping point and destination (20 Comp. Gen. 761). Illustrations of cases when it would be the the interest of the Government to solicit prices both ways are when:

\*-(1) It is the custom of the industry to bid a shipping-point price only.

(2) It is to the advantage of the Government to encourage competition by including bidders who will bid a shipping-point price only.

(3) The cost of the transportation of the commodity is substantial in relation to the cost of the commodity, to bring into the competition the contractor who cannot or is unwilling to meet the large transportation costs.

(4) The ultimate destination is known and when the quantity to be purchased is estimated to weigh 20,000 pounds or more, except for those items that are of a fragile nature or are otherwise exceptionally susceptible to damage in transit.

(5) The ultimate destination is known and when the quantity to be purchased is estimated to weigh 100,000 pounds or more, and is of a fragile nature or otherwise exceptionally susceptible to damage in transit. -\*

c. Provision for Use of Government Shipping Media on F.o.b. Destination Bids. Prices may be solicited on a destination basis even though special or reduced transportation rates have been made available under section 22 of the Interstate Commerce Act. Such cases are very infrequent, but when they occur, reservation should be made in the invitation to bid for the right to require shipment on Government bills of lading

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and to deduct from the quoted destination price the normal rate involved, with opportunity afforded other bidders to meet the advantage so accruing to competitors by offers to equalize such savings in transportation costs, with provision for bidders to show the extent of their willingness in that respect, \*-and their guaranteed maximum shipping weights. -\*

d. Unsolicited Shipping-Point Prices. For procedure to be followed when quotations are received on shipping-point basis and bids were called for on a destination basis only, see FSH 6321.21, item 15.

e. Shipping-Point Prices Only. Solicitation of prices f.o.b. shipping point, without asking for delivered prices also, should be made only in rare instances. Such a solicitation would be proper when the points of use are not known definitely at the time bids are solicited and prices are desired f.o.b. shipping point for shipment of the material on Government bills of lading to various points throughout the country. This method is frequently used when soliciting bids for indefinite contracts, commonly known as source-of-supply contracts. In all such cases the general area to which goods are to be delivered, if known, should be indicated in the invitation to bid.

## 2. Delivery Time Requirements

a. General. A specific requirement for early delivery in the invitation to bid tends to restrict competition, inasmuch as only those firms which are in position to meet the stipulated delivery terms can bid. In addition, such a requirement has a tendency to produce higher quotations than would normally result under an invitation less restrictive. Therefore, the invitation for bids should not stipulate a definite delivery time, except in unusual cases when time of delivery is actually important. When items desired are of regular manufacture, or regularly carried in stock, and quantity is such that bidders should be able to supply promptly, there is ordinarily no need to specify any particular time for delivery. The bidder will specify delivery time in the place provided on the standard bid form.

b. Early Delivery Desired. In some instances early delivery may be desirable but not essential. In cases of this nature there is no objection to including a provision in the invitation to bid to the effect that early delivery is desired and providing a space for the bidder to indicate his best delivery time in terms of calendar days from receipt of notice of award.

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When an expression of desire as to early delivery is included in the invitation to bid, delivery time is not a determining factor, and the low bidder, meeting the specifications, must receive the award unless the stipulated time for making delivery is so long as to be considered unreasonable.

c. Early Delivery Required. When delivery is of necessity stipulated in the invitation to bid, it should be expressed in terms of calendar days from receipt of order to proceed, and not by specific dates. When specific dates are indicated, any delay in making award endangers the stipulated delivery date and may result in inability to award the contract on its advertised terms. When a definite delivery requirement is stipulated in the invitation to bid, delivery then becomes a determining factor in awarding the contract and award may be made only to the low bidder meeting specifications and the advertised delivery requirements, unless the specification contains a provision to the effect that if no bids are received meeting the stipulated delivery the Government reserves the right to award the contract to the bidder quoting the best delivery time, price considered. The phraseology of such a provision (to be included only in the event there is some doubt as to the conditions of the source of supply with respect to the availability of material) should be somewhat as follows:

In the event no bids are received which meet the advertised delivery requirements, the Government reserves the right to make award as will best suit its requirements, delivery time and price considered.

d. Sufficient Time Allowance for Delivery. Delivery time, if specified in the invitation, should be sufficient to enable the bidder under normal procedures to manufacture or obtain the items and make delivery.

e. Partial Delivery Urgent. Frequently a portion of the materials or equipment is needed at an early date, the remainder later. It may be more advantageous in certain instances to solicit separate bids on the two lots, enabling early delivery on the part needed quickly, and possibly the obtaining of a better price on the remainder when more time is allowed. Determination as to whether one or two advertisements should be solicited should rest primarily on the degree of urgency of the initial delivery and its effect on competition. When a single invitation for bids is issued, it is usually advisable to list the early and deferred deliveries as separate items to be

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awarded separately, and in addition, an alternate item allowing bids on the "all or none" basis. Separate bid invitations should not be solicited unless clear-cut justification exists for such action.

### 3. Delayed Delivery--Liquidated Damages

a. General. Whenever failure to complete the work, or furnish the services or supplies within the time specified in the contract, will result in substantial damage to the United States, the specifications should include a stipulation that the bidder, if awarded the contract, shall pay to the Government, without the showing of actual damages, a reasonable stated amount \*-for-\* each calendar day's delay as fixed and agreed liquidated damages.

b. Rates of Liquidated Damages. The rate of liquidated damages will depend on the nature of the service or commodity involved and the circumstances of a particular case. For such items as small supplies and equipment, an amount equal to a specified percentage of the unit price per calendar day for the undelivered portion should be used. (Ordinarily, 1 percent might be satisfactory; however, the actual amount will depend on the administrative decision in each particular case.) Contracts for large, expensive equipment may specify a definite amount per calendar day in lieu of the percentage figure. Liquidated damages wholly disproportionate to the probable actual damage involved and not established primarily as a measure of compensation should not be specified.

c. Reduced Damages Due to Partial Delivery. If delivery of the supplies contracted for will reduce the damages to the Government in proportion to deliveries made, the contract stipulation regarding liquidated damages should be on the basis that damages will be assessed on any undelivered supplies for each calendar day of delay after the delivery date fixed in the contract.

d. Sample Clauses. The following are examples of types of liquidated damage clauses that may be inserted in the invitation for bids. (The type of clause to be used will depend upon the character of the commodity.)

After award is made to a bidder, if he fails to make delivery within the time specified by him, there will be deducted from payment to him, as a liquidated damage, not as a penalty, an amount equal to \_\_\_\_\_ percent of the bid price of the undelivered

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portion of the order for each calendar day of delay, including Sundays and holidays. Delivery time will be reckoned in terms of calendar days starting the day after the date of receipt by the bidder of purchase order and shipping instructions or other formal notice to proceed. The calendar day is the smallest unit or time that will be considered.

After award is made to a bidder, if he fails to make delivery within the time specified by him, there will be deducted from payment to him as a liquidated damage, not as a penalty, \$ \_\_\_ per undelivered unit complete as per specifications for each calendar day of delay, including Sundays and holidays. Delivery time will be reckoned in terms of calendar days starting the day after the date of receipt by the bidder of purchase order and shipping instructions or other formal notice to proceed. The calendar day is the smallest unit or time that will be considered.

\*-e. Contract Provisions. When a liquidated damages provision is to be used in a supply or service contract which includes SF-32, General Provisions (Supply Contract), the provision headed "Liquidated Damages" from exhibit 5 of 5 AR 209 as shown below shall be inserted in the invitation for bids and an appropriate rate(s) of liquidated damages shall be stipulated. See FSH 6322.23 for construction contracts.

Liquidated Damages

Article 11(f) of Standard Form 32, General Provisions (Supply Contract), is redesignated as Article 11(g) and the following is inserted as Article 11(f):

(f) (i) In the event the Government exercises its right of termination as provided in paragraph (a) above, the Contractor shall be liable to the Government for excess costs as provided in paragraph (b) above and, in addition, for liquidated damages, in the amount set forth elsewhere in this contract, as fixed, agreed, and liquidated damages for each calendar day of delay, until such time as the Government may reasonably obtain delivery or performance of similar supplies or services.

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\*- (ii) If the contract is not so terminated, notwithstanding delay as provided in paragraph (a) above, the Contractor shall continue performance and be liable to the Government for such liquidated damages for each calendar day of delay until the supplies are delivered or services performed.

(iii) The Contractor shall not be liable for liquidated damages for delays due to causes which would relieve him from liability for excess costs as provided in paragraph (c) of this clause.

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f. Actual Damages. Liquidated damage provisions should not be used under circumstances wherein the damage to be incurred in the event of a delayed delivery is definitely known in terms of monetary value, since the delinquent or defaulting contractor may be charged with actual damages \*-flowing-\* from the breach of contract.

g. Liquidated Damages Mandatory. When an evaluation clause is used in an invitation to bid, there also must be included a comparable provision for liquidated damages for delay in effecting delivery as agreed.

h. Rejection for Length of Delivery Time. In no case should the invitation for bids provide for rejection of bids specifying a period of delivery longer than that stated in the request for bids, unless it be established that the need is such that the Government's interests would not be protected by the evaluation provision.

i. Sample Evaluation Provision. Following is suggested wording for the delivery evaluation clause:

The equipment called for herein is urgently needed for \_\_\_\_\_, and delivery to destination is desired within \_\_\_\_\_ calendar days. Therefore, award will be determined by placing a delivery evaluation of \_\_\_\_\_ (show here the percentage figure or the dollar figure, whichever is used) per unit per calendar day on all bids requiring more than \_\_\_\_\_ calendar days to make delivery to destination after receipt of purchase order or other formal notice to proceed, and that bid will be accepted which is to the best interest of the Government under such evaluation. For use in the application of this evaluation, time required for delivery may be shown by the bidder under the 'Delivery Schedule' below.

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## DELIVERY SCHEDULE

Item No. 1 \_\_\_\_\_ calendar days

Etc. " "

Note: The liquidated damages clause must specify the same rate as the evaluation clause and should immediately follow the evaluation clause.

4. Quantity Variations--Trade Practice

a. Variations. In contracts specifying the exact quantities desired, variation not exceeding 10 percent caused by conditions of loading, packing, or allowance in manufacturing process, when it is the custom of the trade to do so, may be accepted as complying with the terms of the contract, and payments shall be adjusted to actual quantities delivered. It is advisable to include an appropriate provision relative to trade practice allowances in bid invitations covering commodities applicable to such allowances (paragraph 4 of SF-32).

b. Approximate Quantities Other Than Term Contracts. 14 Comp. Gen. 723 deals with a contract executed by the Treasury Department for "approximately 60,000 pounds" of gray iron castings to be delivered over the period July 1, 1934, until June 30, 1935, to the U. S. Coast Guard Station, Curtis Bay, Maryland. In rendering this decision, the Comptroller General said:

The contract for the castings provided that they were to be furnished at such times and in such quantities as may be required during the period 1 July 1934 to 30 June 1935, to the extent of approximately 60,000 pounds. Aside from the question why a contract should have been entered into on a fiscal-year basis for the delivery of gray iron castings instead of from time to time for specific quantities to meet existing public needs, there would appear to be a question as to the legality of this contract. If it be interpreted as nothing more than a 'wish, want, and will' contract, it may be void for want of mutuality. See Willard Sutherland & Company v. United States, 262 U.S. 489; Updike, trustee v. United States, 69 Ct. Cls. 394. If the contract be interpreted as requiring delivery of approximately 60,000 pounds during the fiscal year 1935, the United States

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might be liable for any failure to issue orders and accept delivery of said quantity under the principles applied in Johnstown Coal & Coke Co. v. United States, 66 Ct. Cls. 616, with which compare Bickett Coal & Coke Co. v. United States, 67, Ct. Cls. 53.

There appears to be no necessity for the United States contracting on such a basis as to result in doubts and uncertainties with possible litigation; therefore, appropriate administrative action shall be taken to prevent the execution of similar contracts by officers and employees of the Forest Service.

5. Patent and Infringement Clauses

a. Contract Provisions. Care should be exercised to avoid specifying an article for which a patent is held by some one individual or manufacturer, which would preclude purchasing under competitive bids. Where it is known that the use of valid patents is required to manufacture supplies for the United States in accordance with Government specifications, bidders properly may be required to show legal right to use the patents, or the United States may directly obtain such rights for its own use or use through its contractors, with notification in the advertised specifications accordingly, but where there is doubt as to infringement of any valid patent, the interests of the United States should be protected through including in the invitation and resulting contract a patent infringement indemnity clause with adequate security therefor. The following wording is suggested:

The contractor shall hold and save the Government, its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses, for or on account of any patented or unpatented invention, article or appliances manufactured or used in the performance of this contract, including their use by the Government unless otherwise specifically stipulated in the contract.

b. Patent Bond. The protection afforded by use of the above clause is necessarily limited to the responsibility of the contractor, unless bond is furnished indemnifying the Government against any action for infringement or illegal use of patent (13 Comp. Gen. 173). Where the Government is on notice of the possibility of an infringement of patent rights, there should be included in the invitation to bid, in addition to the patent clause above, a requirement that the

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successful bidder will be required to post a patent bond in the amount of a stipulated sum. There is no U.S. Standard Form of patent bond; therefore, in instances where such a bond is required, it will be necessary to have the Office of the General Counsel prepare the necessary bond.

c. Patent Infringement Claims. The following arrangement whereby all claims of patent infringement may be handled uniformly has been worked out between the Department of Justice and other departments:

Where there has been a notice of infringement of a patent (for example where the Government has used a device alleged to infringe a patent, or where the Government has requested bids to purchase devices which are alleged to infringe a patent), a copy of the letter or notice of infringement should be promptly sent to the Patent Section of the

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Department of Justice. The other departments will then be asked if they received a like notice. Thereafter a conference should be held to prepare a uniform reply by the departments to such notices of infringement and to outline the Government defenses, including prior use, to locate Government witnesses and to collect and preserve records which might be used in the defense of the case.

"Where a contractor for the Government has received notice of infringement of a patent, such notice should likewise be promptly sent to the patent section of this department (Justice) for actions similar to those notices given directly to the Government. In actions against the contractors the departments involved should collect all contracts pertaining to the subject to determine whether or not they contain provisions whereby the Government has warranted the contractor against patent infringement or the contractor has warranted the Government against patent infringement."

All patent infringement cases should be forwarded promptly to the Chief's office for transmittal to the Department.

6. Walsh-Healey Act Contracts

a. General. The Public Contracts Act, 41 U.S.C. 35 to 45 (also known as the Walsh-Healey Act), is applicable to contracts for the manufacture or furnishing of materials, supplies, articles, and equipment which exceed or may exceed \$10,000 in value and are otherwise subject to the act. The act sets standards of minimum wages, maximum hours, safety and health, and prohibits the employment of child labor and convict labor in the performance of Government contracts. It is administered by the Department of Labor, Wage and Hour and Public Contracts Divisions, which have compiled a booklet entitled "Rulings and Interpretations," containing the text of the act, regulations of the Secretary of Labor, decisions of the Comptroller General relative to the act, and the most important rulings and interpretations of the Department of Labor. Copies of the booklet may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D. C.

b. Bid Conditions. Clause 17 of SF-32, General Conditions (Supply Contract), incorporates by reference all representations and stipulations required by the Public Contracts Act, and regulations issued pursuant thereto by the Secretary of Labor, which become a part of the invitation to bid and are applicable to any resultant contract which is in excess of \$10,000, unless otherwise exempt.



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c. Bidder's Qualifications. In order to be eligible for an award, the bidder must be a manufacturer of, or a regular dealer in, the commodity offered for sale, unless an exception has been made by the Secretary of Labor pursuant to a request by the Secretary.

d. Report of Contract to Department of Labor. Immediately upon award of any contract subject to the act, the contracting officer will report that fact to the Department of Labor on Standard Form 99, Notice of Award of Contract. Award, as used here, includes any release of information to the bidder that his bid has been accepted, whether by formal notification or by advance notice given by telegram, telephone, or orally.

e. Posters for Display by Contractors. The Labor Department will furnish contracting officers with a supply of the poster (PC-13) containing contract stipulations under the act, and form letter (PC-12) containing certain details in regard to the application of the act and regulations to the contract and instructing the contractor to place the poster in a prominent and readily accessible place. Each contractor subject to the act shall be furnished with a poster accompanied by the form letter.

f. Requests for Exceptions or Exemptions. If it is determined that application of all or any part of the stipulations in a contract would seriously impair the conduct of Government business, a complete statement of the facts should be submitted to the Chief's office for handling with the Office of Plant and Operations. That office will, if the facts justify, take the necessary steps to secure relief.

g. Exemptions

(1) Contracts With Other Federal Agencies. The Public Contracts Act is not applicable to contracts awarded by an executive department, independent establishment, or other agency or instrumentality of the United States to another such agency.

(2) Purchases in the Open Market. The act has been construed as inapplicable to a purchase exceeding \$10,000 when such purchase is (a) to be made under an appropriation authorized by law to be expended without regard to Section 3709, Revised Statutes, or (b) to be made in the open market without regard to said section where immediate delivery is required by the public exigency, provided the manufacture of the articles, supplies, materials, or equipment has been completed or almost completed at the time the exigency purchase is made.

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(3) Public Utilities. Contracts for public utility services, including (a) electric light and power, water, steam, and gas; and (b) service by radio, telephone, telegraph, or cable companies, subject to the Federal Communications Act of 1934, are not subject to the act.

(4) Transportation, Hauling, and Delivery. Contracts with common carriers for the carriage of freight or personnel by vessel, airplane, bus, truck, express, or railway line, where published tariff rates are in effect, are not subject to the act.

(5) Contracts Outside the United States. Contracts for materials, supplies, articles, or equipment no part of which will be manufactured or furnished within the geographic limits of the continental United States, Alaska, Hawaii, Puerto Rico, the Virgin Islands, or the District of Columbia are not subject to the act: Provided, That the representations and stipulations required by the act and those regulations in any contract for materials, supplies, articles, or equipment to be manufactured or furnished in part within and in part outside such geographical limits shall not be applicable to any work performed under the contract outside such geographic limits.

(6) Purchase Against Defaulting Contractor. The act is not applicable in the case of contracts covering purchases against the account of a defaulting contractor where the stipulations required by the act were not included in the defaulted contract.

(7) Contracts for Newspapers, Magazines, or Periodicals. Contracts awarded to sales agents or publisher representatives, for the delivery of newspapers, magazines, or periodicals by the publishers thereof, are not subject to the act.

(8) Perishables. Contracts for perishables, including dairy, livestock, and nursery products, are not subject to the act. (Perishables cover products subject to decay or spoilage and not products canned, salted, smoked, or otherwise preserved.) (See the rulings and interpretations issued by the Department of Labor for details.)

(9) Agricultural and Farm Products. Contracts which relate to agricultural or farm products processed for first sale by the original producers are not subject to the act.

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(10) Agricultural Commodities. Contracts by the Secretary of Agriculture for the purchase of agricultural commodities or the products thereof are not subject to the act. (See the rulings and interpretations of the Department of Labor for details.)

(11) Rentals. Contracts for the rental of real or personal property are not subject to the act.

(12) Personal Services. Contracts exclusively for personal services are not subject to the act.

#### 7. Installation--Inclusion of Labor Laws When Applicable

a. Building or Work. If the proposed contract includes the installation of such items as boilers, sinks, electrical fixtures, etc., which involves a substantial amount of work and therefore can be determined to be a repair or alteration of a public building or work, the invitation for bid shall incorporate provisions of the Eight-Hour Law, Convict Labor Prohibition, Kick-Back-Act, and, if applicable, the Miller Act and Davis-Bacon Law. The contracting officer shall determine whether the installation portion of the work to be performed will exceed the \$2,000 statutory minimum for the Miller Act and the Davis-Bacon Law. This determination may be based on the contracting officer's estimate of the installation cost involved or as appropriate by separate bid items for material and installation.

b. Installation Not as a Part of the Building or Work. When the proposed contract includes the furnishing and installing of such items as steel shelving, not installed in such manner as to become a part of the building, the invitation for bid shall include the provisions of the Eight-Hour Law and Convict Labor Prohibition.

c. Extent of Application. Where labor laws are applicable under either a. or b. of this paragraph, a notation should be placed in the bid to the effect that such provisions are not applicable to fabrication or manufacture of the material or equipment at the plant or factory. If the contract covering the manufacturing or furnishing of the material or equipment is in excess of \$10,000 the labor provisions of the Walsh-Healey Act are for application.

d. Incidental Installation. In considering whether incidental installation requires observance of the Eight-Hour Law the Comptroller General decided as follows:

"Contracts for supplies or equipment to be installed by the contractor where the article or equipment is purchased in a

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finished state at a fixed price, and installation is merely incidental to the purchase, are not subject to the eight-hour work limitation law of June 19, 1912, 37 Stat. 137, but when the installation is so part and parcel of the contract as to increase the cost materially, and is of such duration as to require or involve the employment of laborers or mechanics over a substantial period of time, the requirements of the statute are for application." (18 Comp. Gen. 337.)

8. Guarantee. The Government has a right to expect the same service from dealers and manufacturers as they give to the general public. Specifications should include a guarantee statement to meet the current situation. The following sample statement is for information only and should be changed to suit the actual conditions. Period of guarantee may vary for different classes of equipment.

Guarantee: Availability of service and parts is essential in order to insure continued operation of the equipment. Bidder must furnish names and addresses of his authorized local dealers or factory branches, qualified to furnish expert service and parts, located in the vicinity of indicated destination. In addition to any policy guarantees usually extended to the general public, it will be understood that bidder agrees, if his proposal is accepted, that all equipment furnished will be the latest model in the size and type specified, and one in production by the manufacturer at time of delivery; also that all equipment as outlined in bid will be new equipment, and of good material and workmanship, and further agrees to repair or replace free of charge, f. o. b. delivery point, either directly or indirectly, through factory branches or authorized local dealer, any parts that may break or fail in any manner under the use and conditions herein specified, by reason of defective material or workmanship within a period of 90 days from date of purchase.

When performance details are stated in a specification, there may be a need for assurance that an item will be received that will perform satisfactorily, often for several years, especially if there is no practical way in which to perform a test that will make such a determination in advance of awarding the contract or accepting the item. In such cases, it is desirable to call for a guarantee, and the conditions thereof must be stated. If performance details are used, a guarantee should be stipulated, as a requirement of the bid, guaranteeing the item to meet the performance requirements of the specifications for a reasonable period of time. When technical details are stated, any guarantee would be of limited value. In any

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case the guarantee must be reasonable enough so as not to unnecessarily limit competition. The general rule may be stated as follows.

The more general the specifications, the greater the degree of responsibility which the contractor may legally be required to accept, namely, as the technical details are defined by the specifications, the contractor's responsibility for performance must of necessity decrease.

9. Bid Requirements for Literature, Cuts, and Descriptions. When it is desirable to require bidders to furnish descriptive data with their bids, a definite statement should be included in the specifications as to the purpose and effect of such requirement, and particularly to what extent that matter furnished will be considered in the evaluation of the bids. The invitation should either (a) distinctly point out that, notwithstanding a variance between the specifications and descriptive material furnished, the specifications will be controlling, or (b) when descriptive material is deemed essential, contain an affirmative statement to the effect that such material will be in strict compliance with the specifications and that a failure to submit such material with the bid or a failure of the material submitted to comply with the specification requirements, will preclude consideration of the bid as not conforming to the invitation (Comp. Gen. B-12841 of November 6, 1956).

10. Bidders' Weights and Freight Costs. When purchasing equipment items, articles of special fabrication, or anything not priced on a weight basis, it is necessary to use shipping weights shown by bidders in determining freight costs. Therefore, if it is necessary to request bids on f. o. b. shipping basis, invitations should require that bidder specify shipping weight and shipping point. In such cases obvious errors in weight calculations should be called to the attention of the bidder with a request to verify before award is made.

Some bidders have been known purposely to underestimate shipping weights on the presumption that this would give them an advantage over competitors on freight costs. To defeat such a practice, whenever the estimated freight costs based on bidders' weights definitely influence award, a followup should be made to determine actual shipping weights after delivery of goods at destination. If it develops that actual weights are in excess of those given by bidder and used in making award, the excess freight charges resulting therefrom should be assessed against the contractor when settlement of his bill takes place.

11. Inspection and Testing Provisions. The method to be used to determine if items furnished meet contract specifications should be stated in the specifications. This is particularly necessary when



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service requirements and performance details are relied upon in the specification to describe the Government's needs.

Where the particular commodity being purchased must be tested before acceptance as, for example, test by the National Bureau of Standards or other facilities, bidders should be so advised in the invitation for bids and also informed that final acceptance will not be made until completion of the test. Likewise bidders should be informed that if discount for prompt payment is offered, the discount period will begin with the date of final inspection and acceptance if such date is later than the receipt of properly certified invoice or voucher.

12. Split-Items Provision. When it is anticipated or suspected that prospective bidders may not be in a position to offer the total amount needed by the Government, it is necessary to provide for dealing with such offers by including appropriate language in the advertised specifications. Language similar to the following may be employed:

The privilege is extended to bidders to quote on less than the quantity specified and the bidder shall state clearly the quantity he proposes to furnish. Also, the Government reserves the right, unless otherwise specified by the bidder, to make acceptance in lots of not less than (state minimum quantity here) if in the interest of the Government to do so.

13. Bonds, Bid and Contract Security

- a. Bid Bonds. Bid bonds (bid securities) are usually required where the specifications call for the posting of a performance bond. The purpose of bid bond is to guarantee the execution of a formal contract and/or performance bond. The bidder bond protects the Government in the event the successful bidder fails to furnish a satisfactory performance bond. SF-24, Bid Bond, should be attached to the invitation and bidder's attention called to the privilege of furnishing in lieu of bid bond a certified check or postal money order drawn payable to the \*-U.S. Department of Agriculture, Forest Service, or negotiable United States bonds as guaranty. The amount of the guaranty is optional with the contracting officer but ordinarily if for 5 to 10 percent of the bid. -\*

In some instances it may be advisable to require a performance bond in the purchase of supplies but the dollar value of the contract may be so small as to preclude the necessity of a bid bond. In such instances the bid bond may be dispensed with and a provision included to the effect that the successful bidder will be required to furnish a performance bond in a given amount.

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This should not be confused with performance bonds for formal construction contract work where Department regulations require performance bonds in the amount of 100 percent of the contract value.

The following wording is suggested where invitation for bids requires the furnishing of a bid bond. \* \* \* A percentage figure based on the bid price may be stipulated in lieu of dollar figure. See FSH 6322.22 for public works contracts.

Each bidder must submit with his proposal a bid security in the amount of \$ \_\_\_\_\_, which will be held by the Government pending award. Failure to submit bid security before the time set for bid opening will cause rejection of the bid as being nonresponsive. Security may be in the form of a Bid Bond, U.S. Standard Form 24, copy enclosed, or in the form of a certified check, money order, or negotiable United States bonds. Securities of unsuccessful bidders in the form of checks, money orders, or U.S. Government Bonds will be returned upon award of contract. Certified checks and money orders shall be drawn payable to the U.S. Department of Agriculture, Forest Service.

b. Performance Bonds. Performance bonds are not required by law for supply contracts regardless of the amount involved, and are required by law for construction contracts only when they exceed \$2,000; however, in many instances it may be deemed advisable in view of the nature of the goods, or of the firms normally supplying same, to require a performance bond. The purpose of the bond is to insure the furnishing of the goods or services in accordance with the contract. The procurement officer will determine amount of the bond which will depend upon the dollar value of the contract. The bond may be for an amount equal to 100 percent or 50 percent, or may be a smaller percentage of the bid price, depending upon the particular circumstances involved; the important factor is to obtain a bond in such amount as will adequately protect the interests of the Government.

The following wording is suggested where invitation for bids requires the furnishing of a performance bond. A percentage figure based on bid price may be stipulated in lieu of the dollar value.

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The successful bidder will be required to furnish a performance bond on U.S. Standard Form 25 (sample of which may be had upon request) in the amount of \$\_\_\_\_\_.

14. Samples To Be Submitted With Bid. When it is determined that bidders are to submit samples with their proposals, the bid invitation should show the number and size of samples required and

(Continued on next printed page)

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the method that will be used in testing the samples. Bid invitation should also specifically state that the samples must be received prior to the hour set for opening of bids and that samples received thereafter cannot qualify the bid if the specifications fully prescribe the Government's needs.

If practicable, contracts should be made on the basis of specifications which adequately describe the requirements. In some instances, because of the unusual nature of the requirement, it is necessary to request samples and make award on the basis of the sample most nearly meeting the Government requirements. In order to make an award on this basis, the specifications must include a statement (1) of the service requirements and performance details, (2) that it is not feasible to evaluate performance characteristics of the item except by testing samples, and (3) that samples submitted are to be used to determine the product most suitable for the intended use. (See FSH 6323.21.)

15. Milk and Milk Products Clauses. The clause and certificate hereinafter quoted shall be included as a part of all contracts for the purchase of fluid milk and/or products or ingredients thereof. In addition, the contractor must comply with the Federal Food, Drug, and Cosmetic Act and the specifications should so stipulate. For the information of procurement officers, this group of products includes (but not by way of limitation) the following:

Butter	
Buttermilk .....	(Concentrated or otherwise)
Casein	
Cheese .....	(Any variety, processed or otherwise)
Condensed milk .....	(Including sweetened)
Cream	
Dry milk .....	(Whole, concentrated, skimmed, creamed, and buttermilk)
Evaporated milk	
Fluid milk .....	(Raw or processed, whole, concentrated, skim, flavored, cultured, or otherwise)
Frozen desserts .....	(Including ice cream, frozen custard, ice sherbet, milk sherbet, and ice cream mix)

### COMPLIANCE CLAUSE

"The bidder certifies, irrespective of whether he is a party thereto, that he is complying with all marketing agreements, licenses, orders, or amendments thereto now in effect, if any, executed or issued by the Secretary of Agriculture under the provisions of Public Act No. 10, 73d Congress, as amended and as reenacted and amended

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by the Agricultural Marketing Agreement Act of 1937, pertaining to milk or its products and applicable to any of the commodities to be furnished under the contract for which this bid is offered and/or to the bidder. If this bid is accepted, the bidder will continue to comply with all the provisions of said marketing agreements, licenses, orders, or amendments thereto according to the terms thereof, in effect on the date of the opening of this bid, without regard to whether he is himself a party to any of the said regulations.

"The contractor shall not accept from a subcontractor or supplier in the performance of this contract any of the commodities to be furnished under this contract unless the subcontractor or supplier has filed with the contractor a certificate of compliance in form as required by the contracting officer, or if the Secretary of Agriculture has determined that such subcontractor or supplier is failing in the compliance to which he has certified and the contractor has been notified in writing by the contracting officer. If the contractor violates or fails to comply with any of the foregoing requirements, the Government may, by written notice to the contractor, terminate the contractor's right to proceed with the deliveries under this contract and purchase in the open market or otherwise procure the undelivered portion of the commodity or commodities to be furnished and the contractor and his surety shall be liable to the Government for any excess cost occasioned the Government thereby: Provided, That the determination of the Secretary of Agriculture as to the failure of compliance by the contractor or subcontractor to which they have certified or agreed, shall be final and conclusive upon the parties hereto."

The "Certificate of Compliance with AAA" is not to be signed by the bidder, but is to be executed by his supplier or subcontractor and is to be retained by the contractor at his place of business as evidence of compliance by his supplier or subcontractor:

CERTIFICATE OF COMPLIANCE WITH AAA

(To be executed by subcontractor or supplier  
and filed with contractor)

It is hereby certified that, irrespective of whether the undersigned is a party thereto, the undersigned is complying with and will continue to comply with all marketing agreements, licenses, orders, or amendments thereto now in effect, if any, executed or issued by the Secretary of Agriculture pursuant to Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, pertaining to milk or its



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products and applicable to any of the commodities furnished to the United States under the contract between the parties hereinafter named, and/or to the undersigned, under the terms thereof.

\_\_\_\_\_  
(Contractor)

\_\_\_\_\_  
(Department or Agency)

Executed \_\_\_\_\_, 19\_\_

\_\_\_\_\_  
(Signature)

(See FSM 6301 for Federal Food, Drug, and Cosmetic Act.)

16. Trade Discounts Provision. When the issuing officer has a proposed purchase which he knows from experience or has reason to believe may involve a trade discount, he should also incorporate in the invitation a notice that bidders should carefully distinguish between trade discounts and time discounts (discounts for prompt payment), as this is one of the common causes of errors in bids.

17. Raw Materials Furnished Contractor by Government. The specification should clearly identify any materials to be furnished by the Government for fabrication or use by the contractor, with a stipulation therein that title remains in the Government and all such property not consumed in the performance of the contract will be returned upon contract completion. Ordinarily, no bond or insurance coverage is required. However, when the value of the material is substantial and it is known that the contractor's financial position is not adequate to cover potential loss or damage, a requirement for insurance may be incorporated in the specification. In either case, the contract shall contain an appropriate provision to fix financial responsibility of the contractor for any loss of or damage to the Government-furnished property.

18. Provisions for Return or Sale of Containers

a. Trade Custom. Supplies are sometimes furnished in containers that are of such construction that they can be used repeatedly. Contractors very often do not include such containers in the sales contract, but lend or rent them to purchasers of their products, and it is desirable that the bid invitations provide for such loan, rental, and payment of cash value in case of loss or damage while in the possession of the

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Government. Contractors customarily lend such containers free for certain designated periods, such as 30, 60, or 90 days, after which there is a rental or demurrage charge for containers not returned before the end of the free period. The containers are usually numbered for purposes of identification.

b. Demurrage Computations. Frequently long periods elapse before some containers are emptied and returned, and if payment is made for demurrage of each container, considerable demurrage would frequently occur. Accordingly, provisions should be made in the bid for the return of the containers and payment of demurrage under the quantity-basis system. For example, with a 30-day free period, if 10 containers obtained July 1 are held for 45 days, and 10 obtained July 15 are held for 15 days, no charges accrue under the quantity basis because 10 containers will have been returned at the close of July and the remaining 10 can be held until August 16. If demurrage had been payable on each individual container, there would have accumulated 150 days' demurrage on the containers obtained July 1 and returned August 15 even though the 10 obtained July 15 were returned when only half the allowable free period had expired (17 Comp. Gen. 301).

c. Suggested Provisions for Invitation To Bid. Below are suggested clauses covering containers, including oxygen and acetylene gas cylinders:

(1) Containers. (Bidder must fill in completely the blank spaces below.)

Containers owned by the contractor shall be loaned free of rental charge for a period of \_\_\_\_\_ months. After the period of free use a rental of \$ \_\_\_\_\_ per month per container will be paid for their use by the Government for not to exceed \_\_\_\_\_ months: Provided, That where a record of the serial numbers of individual containers is not kept by the contractor, demurrage payments may be made on the quantity basis. All containers not returned to the contractor within the periods of free use and rental will be paid for at the rate of \$ \_\_\_\_\_ each, all rental charges in such cases to be applied as part of said price, and the Government to own the containers outright. All empty containers which are not retained and paid for will be returned to the contractor, transportation charges prepaid by the Government.

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(2) Gas Cylinders. (Bidder must fill in completely the blank spaces below.)

Cylinders shall remain the property of the contractor and shall be loaned to the Government for a period of 30 days after the date of shipment of cylinders from contractor's plant. Beginning with the first day after the expiration of the 30-day free loan period there will be charged and the United States agrees to pay the contractor a rental of the rate of \$\_\_\_\_ per cylinder per day for the use of the cylinders not returned to the contractor.

All cylinders not returned to the contractor on or before the expiration of a 90-day rental period or lost or damaged beyond repair while in the possession of the United States Government shall be paid for by the United States to the contractor at a replacement value of \$\_\_\_\_ for each oxygen cylinder of 200 to 220 cubic feet capacity and \$\_\_\_\_ for each acetylene cylinder of 200 to 250 cubic feet capacity.

Cylinders retained or lost and so paid for shall be considered the property of the United States. But if and when located they may, at the option of the Government, be returned to the contractor and, in such event, credit shall be allowed to the Government at the replacement value paid, less rental at the rate of \_\_\_\_ cents per day beginning at the expiration of the free loan period as aforesaid to the date upon which cylinders are turned over to carrier for return to the contractor's plant.

19. Provisions for Purchase of Used or Reconditioned Equipment. Department policy provides that used equipment or reconditioned equipment should not be purchased when new equipment is available at reasonable costs.

If new equipment is not available, or the price thereof is excessive, and it is necessary to advertise for used or reconditioned equipment, the following conditions should be observed.

Invitations must specify clearly just what quality or what degree of precision is required.

If it is specified that the used equipment is to be as good as new, bids should be requested on either new or used, the bidder to indicate which is offered.

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When bids are invited on used equipment, it is desirable that bidders be requested to indicate the place at which the equipment may be inspected by a representative of the Government, if the Government should elect to make an inspection prior to award. Such inspections may be made by a qualified agency employee or, if the agency has no qualified person within a reasonable distance, it may be possible to have someone from another agency having offices in the vicinity to make the inspection.

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6323 - RECEIPT, OPENING, AND ANALYSIS OF BIDS6323.1 - Receipt and Opening

6323.11 - Bid Security \* \* \* Procedures to be followed in the receipt and opening of bids in connection with supply contracts are applicable to those for construction. \* \* \*

Each procurement office shall maintain a bid box or file in which all bids received shall be deposited until the time set for opening. In no circumstances will unsealed bids be accepted, nor will the procurement office personnel render any assistance to bidders in connection with preparation of bids. The bid box shall be kept securely locked and the procurement officer, or his duly authorized representative, will at all times have custody of the key.

\* \* \* \* \*

6323.12 - Delayed Bids

\*-1. Consideration of Late Bids in Making Award. A late bid shall be considered for award only in accordance with item a below combined with either item b or c.

- a. It is received before award.
- b. It is determined that its lateness was due solely to one of the following alternatives:
  - (1) Delay in the mails for which the bidder was not responsible.
  - (2) Delay by the telegraph company through no fault or neglect on the part of the bidder, provided the invitation for bids specifically authorized telegraphic bids.
- c. It is determined that the bid, if submitted by mail or telegram, was received at the Government installation in sufficient time to be received at the office designated in the invitation by the time specified for receipt, and, except for delay due to mishandling on the part of the Government at the installation, would have been received on time at the office designated.
- d. Bids presented by hand after the time specified for opening will not be accepted.

2. Bids Delayed in Mail. Bids received after the time fixed for opening, due to delays in the mail or due to delay by the Government office designated to receive the bid, will be considered, -\*



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\*-provided award has not already been made (FSH 6323.12, item 1), and provided further that the envelope containing the bid bears a post office cancellation mark or stamp of an approved metering device indicating clearly that the bid was mailed in proper time and manner to have been received in the ordinary course of mails before the time fixed for the opening of bids. In case of doubt, information may be obtained from the local post office as to the date and hour when the mailed matter should have arrived according to the postmark of the forwarding post office. The following rules shall also apply:

a. In the event of record conflict between a post office cancellation stamp and a stamp of a metering device, the post office cancellation stamp will govern.

b. The receipt of registered mail, delivered after time for bid opening but before award and which cannot be ascertained to have been mailed on time to receive consideration, will be verified with the postal authorities serving the contracting activity (time of registration is considered evidence of time of mailing).

c. If the bidder, before award, offers clear and convincing evidence, including substantiation by the post office, of mailing time which demonstrates that the bid was mailed in sufficient time to be received before the time set for opening of bids, it will be considered.

d. Late bids which bear a date but not the hour of mailing will be considered to have been mailed at the last minute of the date shown unless otherwise substantiated by postal officials serving the contracting office or by evidence submitted by the bidder as indicated herein.

3. Bids Delayed by Telegraph Company. Bids, when telegraphic bids are authorized in the invitation, which were deposited for transmission by telegraph in time for receipt, by normal transmission procedure, prior to the time fixed in the invitation for bids and subsequently delayed by the telegraph company through no fault or neglect on the part of the bidder, or delayed by the Government office designated to receive the bid, will be considered if received prior to the award of the contract. The burden of proof of such abnormal delay will be upon the bidder, who must present clear and convincing evidence, including substantiation by an authorized official of the telegraph company that the bid was filed with that company in sufficient time to have been delivered by normal transmission procedure. The decision as to whether or not the delay was so caused will rest with the officer awarding the contract. -\*

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4. Bids Mailed Too Late. When a bid is received in the mails after the hour of opening, and it is shown by the mailing envelope postmark that it was not mailed in proper time or manner to have been received by the hour of opening, it should be returned unopened to the bidder, with a letter stating that the time and place of mailing indicated by the postmark show that the bid was mailed too late for consideration. If it is necessary to open the envelope to ascertain the name and address of the bidder, or to obtain any other identifying information, appropriate explanation should be given in the letter to the bidder.

Late bids received before award, the timely mailing of which cannot be substantiated by information available either from that apparent on the envelope or through the postal officials serving the contracting office, will be held unopened until after award unless clear and convincing proof is submitted that they were mailed in time for consideration or unless other disposition is requested or agreed to by the bidder; and the bidder or bidders submitting such bids shall be notified promptly before the award substantially as follows:

Your bid in response to Invitation for Bids No. \_\_\_\_\_, dated \_\_\_\_\_, was received after the time for opening specified in the invitation.

Accordingly, the bid may not properly be considered unless clear and convincing evidence (including substantiation by the post office of mailing) is submitted promptly (and in any event before award) showing that failure of the bid to arrive on time was due solely to delay in the mails for which you were not responsible.

5. Incorrect Mailing Address. A bid showing an incorrect mailing address and resulting in a late bid is not for consideration. The fact that the bid was received at another Federal office because of incorrect mailing address, by the time fixed for the opening, is not sufficient reason for considering the bid.

6. Disclosed Price on Late Bid. It sometimes happens that the price quoted on a late bid is disclosed to the contracting officer. This may occur in the inadvertent opening of a late bid, in opening a late bid to determine the sender, or in the case of a telegraphic bid. If the price thus disclosed is substantially lower than the bid which was intended for acceptance, the contracting officer should consider administratively the advisability of readvertisement in order to obtain the benefit of the lower price. In making his decision, he should consider the amount of money to be saved, the possible delay in making the procurement, the added expense of

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reissuing invitations for bids, the present market trends, and any other pertinent factor. Readvertisement shall be issued only when it is reasonably certain to prove beneficial to the Government.

6323.13 - Public Opening and Recording of Bids. It is necessary to adhere to the advertised time of opening. At the advertised hour for opening, all bids received shall be publicly opened and read aloud in the presence of bidders, press representatives, representatives of bonding companies, and any other persons who have a legitimate interest. In no circumstance should persons present be permitted to handle bids. Any information desired by bidders will be furnished orally at time of opening. \*-Engineer's cost estimates are administratively confidential and are not to be revealed until after the bids have been opened and read. -\*

Collateral papers, \*-such-\* as descriptive literature and pricelists, should not be removed from bids after opening. Such papers are as much a part of the proposal as the standard form which carried the specifications and signature of the vendor. It is important that all papers accompanying an accepted bid remain attached thereto when the bid is sent to the fiscal agent's office.

After opening, all bids must be recorded on a permanent record, to be entitled Abstract of Bids, showing the names of bidders and the bid prices and terms. A copy of this record should be placed in the permanent bid invitation file.

6323.13a - Action on Bids. Upon opening bids, the contracting officer will notify the originating operating unit regarding offers received and the results of reviews of the low bidder's qualifications. The consent of the unit will be obtained prior to making an award.

6323.14 - Retention of Bid Envelopes. All bid envelopes should be retained in the files of the procurement office for a reasonable length of time for use in the event of controversy over the time a certain bid was received, etc.

6323.15 - Modification of Bids

1. By Bidders. Bidders may modify bids already submitted by means of a letter or telegram setting forth the modification, or by submitting a new bid to supersede the old. \*-Modification of the bid may be accepted even though it may represent quotations on items not previously bid upon, provided such modification is otherwise responsive to the invitation. A modification received from an otherwise successful bidder, which makes the terms more favorable to the Government and would not be prejudicial to other bidders, shall-\*

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\*-be considered at any time it is offered. Telegraphic modifications should not reveal the amount of the original or revised bid. Modifications by telephone will not be permitted. Telegrams modifying bids which are received before the time fixed for the opening will be immediately sealed in envelopes and opened publicly at the appointed time with the bids originally submitted. A late modification received from other than a successful bidder shall be considered in accordance with the rules set forth for considering late bids, and if it is not responsive thereunder, shall be returned to the bidder with substantially the information stated in FSH 6323.12 (17 Comp. Gen. 961 and Comp. Gen. B-140552, September 3, 1959).-\*

2. By Government. In making awards, procurement officers may not modify the terms of a bid with regard to the time of delivery, specification details, or any other material element. No modification of the bid will be permitted after the opening; and no negotiations with the bidder will be entered into which will modify or change the bid to affect the rights of competing bidders.

Modifications which would be advantageous to the Government, and which would not in any manner affect the basis of award, may be mutually agreed upon and embodied in the contract. For example, if a low bidder should offer for any reason to give the Government the benefit of lower prices than offered in his proposal, such offers may be accepted.

6323.16 - Withdrawal of Bids. Bids may not be withdrawn after opening and prior to expiration of the option period specified, but bids may be withdrawn at any time prior to the time of opening. When bidders desire to withdraw their bids prior to the hour set for the opening, they must make their request in writing or by telegram. Telephone requests for such action shall not be honored.

6323.2 - Analysis. In every procurement transaction it is of importance, before any award is made, that the procurement officer consider whether or not the particular transaction involved falls within the limits of his purchasing or contracting authority.

Particular care should be taken in analyzing bids for construction work to assure the sufficiency of the bid bond and to determine that the low bidder is responsible and qualified to perform the work, that the bid price is reasonable by comparison to the agency engineer's estimate, that the unit price bid for each schedule item is reasonable and not weighted, and that no exceptions to the bid specifications are taken by the bidder. When there is any doubt regarding the bidder's financial ability or experience qualifications, the bidder's bonding company, bank, State association of construction contractors, and previous contract employers should be contacted. Bonding companies particularly are helpful in resolving



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questions in this area. Rejection because of insufficient financial ability or experience qualifications should be supported by the opinion of those contacted as above.

6323.21 - Requirements. There follows a detailed explanation of each bid analysis requirement.

1. Responsibility of Bidders

a. General. Contracts for supplying the needs of the Government shall be made only with manufacturers or producers, regular dealers, or service establishments as defined in item b below, who have been determined to be responsible as sources of supply as set forth herein. It is the responsibility of the contracting officer to determine that the prospective contractor is qualified and responsible prior to award.

In 10 Comp. Gen. 314, it was held that advertisement for supplies may properly limit competition to manufacturers of or regular dealers in such supplies, and may require a showing of the facts to be submitted with the bids to establish that the bidders are manufacturers or regular dealers in such supplies. If a low bid is to be rejected because there is belief that the bidder is not such a manufacturer or regular dealer, the administrative statement of reasons should be submitted to the General Accounting Office for consideration in advance of contracting for the supplies.

b. Definitions of Qualified Supplier

(1) Manufacturer or Producer. A person or firm who owns, operates, or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment of the general character of those to be supplied, \*-or who, if newly entering into a manufacturing activity, has made all necessary prior arrangements for manufacturing space, equipment, and personnel, to perform the manufacturing operations required for contract performance. -\*

(2) Regular Dealer. A person or firm who owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character of those to be supplied are bought, kept in stock, and sold to the public in the usual course of business. There are exceptions to this definition in the case of certain commodities. See the booklet, Rulings and Interpretations, published by the



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Secretary of Labor under the Walsh-Healey Public Contracts Act, for an explanation of these exceptions. Copies of the booklet may be purchased from the Superintendent of Documents, Government Printing Office, Washington 25, D. C.

(3) Service Establishment. A person or firm who owns, operates, or maintains any type of business which is engaged principally in the furnishing of nonpersonal services, such as repairing, cleaning, redecorating or rental of personal property, including the furnishing of necessary repair parts or other supplies as a part of the services performed, \*-or who, if newly entering into a service activity, has made all necessary prior arrangements for personnel, service equipment, and required licenses to perform services. -\*

c. Criteria for Determining Responsibility. The contracting officer shall make such investigation of bidders as is necessary to learn \*-of-\* their financial standing, reputation, experience, resources, facilities, judgment, efficiency, capacity, integrity, and such other factors as may be applicable to the proposed contract. The extent to which information \*-as to-\* these factors must be developed for a particular contract will vary but, in any case, should be sufficient to assure the contracting officer of adequate contract performance.

\*-In order to qualify as responsible, and meet standards as they relate to the particular procurement under consideration, in the opinion of the contracting officer a prospective contractor must:

- (1) Qualify under item b above.
- (2) Have adequate financial resources for performance, or have the ability to obtain such resources as required during performance.
- (3) Have the necessary experience, organization, technical qualifications, skills, and facilities, or have the ability to obtain them (including probable subcontractor arrangements).
- (4) Be able to comply with the proposed or required time of delivery or performance schedule.
- (5) Have a satisfactory record of integrity, judgment, and performance. -\*

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\*(6) Have not indicated an unwillingness or inability to conform to the requirements of the standard nondiscrimination clause.

(7) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

Acceptable evidence of ability to obtain financial resources, experience, organization, technical qualifications, skills, and facilities, generally shall be a firm commitment or arrangement for the rental, purchase, or other acquisition thereof. -\*

There may be instances when a bidder's qualifications may not be otherwise subject to challenge, but experience has proved him unreliable in completing his contracts in a reasonable time or in furnishing the quality of materials or workmanship required by the specifications. The Government is not required to award a contract to a low bidder who \*-has-\* shown by facts on record to have attempted repeatedly to avoid performance of the work according to his contracts. If the facts of a particular case have not been adequate to justify debarment \*-(FSH 6321.2), -\* action may be taken in specific cases to reject a low bid when in the opinion of the contracting officer the bidder is not competent to perform and the facts on record clearly support such determination. Doubtful cases may be submitted to the Washington office for advice.

d. Capacity and Credit of Small Business Concerns. In the case of a prospective contractor which is a small business or concern, if the contracting officer is not satisfied that the prospective contractor meets the standards in item c above only because of the lack of adequate capacity or credit, he shall, before making a responsibility determination, comply with the requirements concerning Certificates of Competency issued by the Small Business Administration (FSH 6327.5). -\*

2. Agents and Attorneys of Bidders. Bids executed by agents or attorneys may be accepted, provided the authority and right to execute such bids as agents or attorneys is established clearly by powers of attorney or other qualifying evidence. In case a bid or contract is executed by an agent or attorney, it is necessary that the bid be submitted or the contract executed in the name of the principal. The fact that the bid was submitted or the contract executed by an agent should be shown clearly in the document, and the authority of the agent must be established (Comp. Gen. A-72995, Apr. 16, 1936, unpublished).

3. Correspondence With Bidders. Should it become necessary to correspond with a bidder prior to award, extreme care should be exercised to avoid any statement or question that would encourage the bidder to modify his offer (except to waive objectionable features

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of his bid where specifically requested to do so) or that would imply that an award different from that intended by the advertised specifications is being contemplated. Such correspondence should always be conducted by the contracting officer.

4. Unit Prices Govern. Clause 1 (c) on the reverse of SF-33 states that "In case of error in extension of price, the unit price will govern." In a decision to the Secretary of the Treasury A-69096 (150030), unpublished, the Comptroller General cites a case in which an invitation for bids on six items provided that: "Bidders are required to give unit prices, but award will be made on a lump-sum basis." A bidder extended prices on each item and quoted lump-sum, which is the total of extended prices for the several items as they appeared on the bid. In quoting on all of said items, the total thereof was incorrectly stated \$85 instead of \$185. In this instance, since the invitation provided that unit prices be stipulated, and in case of error in extension of prices in bids, the unit prices would govern, it was proper to consider the bid on the basis of having been made in the correct amount, namely \$185, and consider the lump-sum bid accordingly in making the award.

5. Acceptable Signature on Bid. All bids must be signed by the bidder. While the use of lead pencil in signing Government contracts is not prohibited by law, such use should be discouraged, and there is no objection to the inclusion in invitations for bids of a directory, rather than mandatory, provision that signatures be in ink or indelible pencil, but a low bid which is otherwise acceptable may not be rejected because signed with a lead pencil (19 Comp. Gen. 422). A rubber stamp or facsimile signature is acceptable only if documentary evidence indicates that such signature is authorized (34 Comp. Gen. 439). Corporate, trade, or partnership titles may be stamped or typewritten, but the actual signature of the authorized representatives of the business concern must appear on all bids.

6. Unsigned Bids. Unsigned bids must be rejected unless accompanied by a bond, letter, or other signed documentary evidence; or samples, required by the invitation, have been furnished by the bidder, clearly establishing his intent to submit a bid (17 Comp. Gen. 497, and B-124029 of June 1, 1955). The decisive question is whether acceptance of the bid as submitted will effect a contract binding on the bidder, and questionable cases should therefore be referred to the Office of the General Counsel for determination as to whether acceptance will create an enforceable contract.

7. Bids Not on Government Forms. Bids not on Government forms may be accepted, provided:

- a. The language of the bid clearly indicates that it is in response to the advertised invitation to bid.

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b. That which is offered is in accordance with the advertised specification.

c. No right is reserved by the bidder which would limit his liability to a greater extent than was provided in the invitation to bid.

When such a bid is accepted, the complete invitation to bid, in blank, shall be attached to the accepted bid and made a part of the contract.

8. Bids Contingent on Award Pursuant to Other Bids. Bids submitted in response to separate advertisements should stand by themselves and should be considered on that basis only. In the syllabus of 8 Comp. Gen. 663, it was stated as follows:

Where two projects are advertised separately and proposals are requested separately thereon, a bidder who is high on one proposal may not have same accepted by virtue of an alternate proposal contained in the second bid to reduce same sufficient to make him the low bidder under both advertisements in the event he is awarded all the work.

If, in the above circumstance, each of the bids in question had been low without any reduction as proposed, award of both would have been proper and the award would properly have been at the reduced price.

9. Manufacturer Bidding in Competition With Dealer. A manufacturer who has quoted prices to one of the bidders is not thereby disqualified from himself submitting a direct bid for the same article or articles.

10. More Than One Bid by Same Bidder. If more than one bid is offered by any one party, by or in the name of his clerk, partner, or other agent or representative, all such bids may be rejected. This will not prevent a bidder from submitting modified or alternative bids quoting different prices on different qualities of material or different conditions of delivery. In 14 Comp. Gen. 168, it was held that bids should not be received in response to advertising from two corporations one of which is owned and controlled by the other, the business being done for the benefit of such other corporation with the corporate identities of two corporations being retained merely for trade purpose. In the event such situations arise, the companies involved should be informed that only one bid will be considered, preferably under the name of the principal concern. There is nothing in the law, however, to prohibit two or more companies of a corporation from submitting bids, provided the parent or holding company does not bid. In such cases, bid specifications

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should require each company to name the brand or product offered, location of plant, shipping point, etc.

**11. Alternate Bids**

a. Definition. An alternate bid is one that offers equipment differing in quality and type from that requested by the advertised specifications. A bid is not necessarily an alternate bid merely because a bidder designates it as such in his bid. Many times bidders will submit more than one bid price based on differing qualities of materials, all or some of which may meet the advertised specifications. A low bid meeting the advertised specifications, whether or not it is designated by the bidder as an alternate bid, is properly for acceptance.

b. Consideration for Award. Alternate bids will not be accepted unless the invitation to bid specifically called for alternate bids, thereby giving all bidders equal opportunity.

Should an alternate bid be received, however, which is more advantageous than the original proposal, all bids should be rejected and new advertisement prepared with modified specifications.

In making award, where alternate bids are invited and received, it is optional with the awarding officer whether the principal bid or alternate bid shall be accepted. His decision in this respect may be influenced by various factors other than price, such as availability of funds, time of delivery, quality of service, and operating and maintenance cost. The lowest principal bid, or the lowest alternate bid received, must be accepted; award is to be made on the basis of either the principal or alternate bid irrespective of the fact that a lower bid may have been received in the other class.

**12. Indefinite and Incomplete Bids.** A bid that is indefinite about bid price, terms, or conditions should be rejected.

Incomplete bids are sometimes received. Samples, catalogs, descriptive circulars frequently are overlooked; and signatures, certificates, f.o.b. points, weights, and even prices are inadvertently omitted. Omissions sometimes are made which have no material bearing on award, and in such instances may be disregarded. On the other hand, it happens occasionally that missing information or material is essential to the award and the low bid cannot be determined without it. In such instances, care must be exercised by the awarding officer to avoid possible injustice to bidders who have submitted complete bids, also to avoid possibility of inferior substitutions by bidders who might seize upon a technical informality of this kind to gain an award.



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No hard and fast rule can be adopted to govern all cases of incomplete bids. It may be to the advantage of the Government at times to waive certain informalities. In other circumstances, it may be distinctly unfair to some of the bidders and disadvantageous to the Government to do this. However, a reasonable time should be allowed bidders in which to furnish catalogs, literature, etc., which are specifically referred to and may comprise a part of bid. If in doubt as to the proper action to take, the matter should be referred to the Washington office for determination of acceptance or rejection of the bid or bids involved.

13. Purchase of Foreign Materials. For information in considering bids under which purchase of foreign-made articles is involved, refer to FSM 6310.16.

14. Errors in Bids

a. Determination. Before accepting any bids, extensions and additions should be checked for correctness. In order that a bid shall be binding, it must be clear that the minds of the bidders are in accord; namely, that they are bidding on identical quantities and specifications. When a bidder alleges mistake in his bid, the procedure outlined below should be followed. Officers concerned should not predict the probable action and should not give a bidder any assurance that claim for additional payment will be approved.

\*-b. Responsibility of Government. As a general rule a bidder cannot withdraw or change his bid after opening. Such rule does not apply where the bidder establishes, prior to award, that he made an honest mistake, since acceptance of a bid with knowledge thereof does not constitute a valid or binding bid. If the contracting officer has actual or constructive notice of an error in a bid after opening, he cannot, except as provided in item c below, accept the bid, but must give the bidder an opportunity to explain the error or verify his bid. If sufficient evidence of error exists, the Office of the General Counsel permits the withdrawal of bids. The Comptroller General has held that the interest of the Government in preserving and maintaining the competitive bidding system requires that bids should rarely be corrected. Even where the correction is in a low bid, which does not affect the relative standing of other bidders, the Comptroller General has corrected bids "only where the evidence submitted establishes beyond all doubt the actual intention of the bidder." Ordinarily, this condition is met only where the intended bid can be ascertained substantially from the invitation and the bid itself, and the bidder's work papers or other extraneous evidence is merely corroborative. -\*

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A representative of the bidder has authority to verify the bid if it appears that he is an employee of the bidder and is present at the bid opening in such capacity (14 Comp. Gen. 453; 17 Comp. Gen. 575, 576; 36 Comp. Gen. 441).

c. \*- Correction of Mistakes

(1) By Office of the General Counsel. Except for mistakes which the contracting officer is authorized to correct in accordance with item (2), all cases involving the correction of mistakes in bids disclosed before or after award of procurement or sales contracts shall be forwarded, through agency channels, to the OGC for appropriate determination or other action pursuant to the authorities contained in 41 CFR subpart 1-2.4, in 25 F.R. 10486 (Nov. 1, 1960), and in Comptroller General Decision B-125189, October 3, 1955.

Whenever a mistake in bid is alleged or disclosed, the contracting officer shall advise the bidder or contractor to support the alleged error by written statements and by all pertinent evidence, such as the file copy of the bid, original worksheets and other data used in preparing the bid, subcontractors' and suppliers' quotations (if any), published pricelists, and any other evidence which will serve to establish the mistake, the manner in which it occurred, and the bid actually intended. Supporting data to be submitted to the OGC must include (1) all evidence furnished by the bidder or contractor; (2) a copy of the bid or a copy of the contract and any specifications or drawings relevant to the alleged mistake, and any change orders or supplemental agreements thereto; (3) an abstract or record of the bids received; and (4) a written statement by the contracting officer setting forth:

(a) Specific information as to how and when the mistake was alleged or disclosed.

(b) Summary of the evidence submitted.

(c) His opinion whether a bona fide mistake was made in the bid and whether he was, or should have been, on constructive notice of the mistake before the award, together with the reasons or data upon which his opinion is based.-\*

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\*(d) In the event only one bid was received, a quotation of a recent contract price for the supplies or services involved or, in the absence of a recent comparable contract, the contracting officer's estimate of a fair price for the supplies or services, and the basis for such estimate.

(e) Any additional evidence considered pertinent, including copies of all relevant correspondence between the contracting officer and the contractor or bidder concerning the alleged mistake.

(f) The course of action with respect to the alleged mistake that the contracting officer considers proper on the basis of the evidence, and, if other than a change in contract price is recommended, the manner by which the item will otherwise be procured.

(g) The status of performance and payments under the contract, including contemplated performance and payments.

The determination and all relevant material will be returned through channels to the contracting officer for maintenance of the official files thereon. A copy of the determination shall be attached to each copy of any contract rescission or reformation resulting therefrom.

(2) By Contracting Officer. Any clerical mistake, apparent on the face of the bid, may be corrected by the contracting officer prior to award, if the contracting officer obtained from the bidder verification of the bid actually intended. Correction shall be reflected in the award document. Examples of such apparent mistakes are:-\*

(a) Transposed Factory and Destination Prices. In 16 Comptroller General 999 it was held that " \* \* \* where the only question involved is the erroneous quotation of a lower price f.o.b. destination than f.o.b. factory--a mere transposition of the bid prices--the correction may be made, after confirmation by the bidder, without submitting the matter to this office for decision. "

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(b) Erroneous Discount Offer. In 17 Comptroller General 493, the contracting officers were authorized to disregard an offer of discount which is obviously erroneous because it purports to offer a larger discount for payment within a longer than a shorter period of time. In this case, the bid showed discounts of 1 percent--10 days, 1/2 percent--20 days, and 30 percent--30 days, whereas it was intended to show net--30 days. The Comptroller General declared, "Obviously, the bidder did not intend to give 30 times as much discount for payment within 30 days as it offered for payment within 10 days."

(c) Misplaced Decimal Point. In 17 Comptroller General 339 it was held that when the error "\* \* \*" involves only placement of a decimal point, the correction may be made without submitting the matter to this office for consideration. In this case, the error was apparent. The unit prices stated, multiplied by the quantities given, would equal just one-tenth of the totals stated. A comparison of the bid with other bids left no doubt that the error was in the unit prices and not in the totals."

(d) Failure To Show Proper Unit. In 17 Comptroller General 843, it was decided that "\* \* \*" when the extended total does not agree with the unit price for the quantity involved and it is apparent to the contracting officer that the discrepancy is in the designated unit rather than in the unit price or the total price and the bidder confirms the contracting officer's interpretation before any award is made, the correction may be made without submitting the matter to this office."

(e) Erroneous Price on Lot Item Resulting From Erroneous Price on Separate Items. Decision B-4446, dated June 29, 1939 (18 Comp. Gen. 1003), permits correction of errors in the bid price on a lot item which results from obvious errors (misplaced decimal point or error in extension of total price) in bids on separate items included in such lot, when it appears that the price bid on the lot is the exact total of the separate bids on the separate items.

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d. Correction of Mistakes Alleged After Award. Where the contractor alleges a mistake in his bid after the contract has been awarded, the matter must be treated as a claim for decision by the Comptroller General. Such cases may either be submitted to the Comptroller General by the certifying officer, if an invoice for the additional amount involved has been received from the contractor, or be forwarded through agency channels for presentation to the Comptroller General by the Secretary. The latter method should be employed when it is not desirable to wait for the submission of an invoice from the contractor. Claims submitted to the Comptroller General must be accompanied by supporting data as outlined in item c(1).

e. Handling of Bid Mistakes When Time Will Not Permit Delay in Award. When the time shown for acceptance of a bid involving an apparent or alleged mistake will not permit delaying award, the bid should be accepted as made, subject to final determination by the Comptroller General. Such cases should be handled as in item d.

15. Bid Informalities

a. General. Informalities in bids are deviations from the advertised specifications which may or may not affect consideration for award, depending on the nature of the deviations involved. The primary question for determination is whether the deviation from the requirement goes to the substance of the bid to affect price, quantity, or quality of the articles offered or is otherwise prejudicial to the rights of other bidders, or is merely a matter of form or other immaterial or inconsequential variation. In such circumstances, the general rule for consideration in the awarding of bids is found in the syllabus to 17 Comptroller General 554, which is as follows:

To permit acceptance of bids not complying in substance with advertised specifications would be farcical and destructive of open-competitive bidding in awarding of contracts, strict maintenance of the rule being infinitely more in public interest than obtaining apparently pecuniary advantage in a particular case by its violation. 17 Comptroller General 409, amplified, and 15 Comptroller General 107, distinguished.



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Also, in 16 Comptroller General 392, it is stated:

In the awarding of Government contracts, there is a well-established principle that the contract offered the successful bidder must be the exact contract which was submitted to competition.

b. Informalities of Form. Informalities of form are immaterial deviations from the exact requirements of the advertised specifications which would not affect price, quantity, or quality of the items offered, or the rights of other bidders, and therefore are not a basis for rejection of bids. For example, a bid will not be rejected for failure of the bidder to furnish the proper number of copies of bid material, to affix the corporate seal, or to address bids exactly as shown in the instructions \*-(Comp. Gen. Dec. B-141591, Mar. 29, 1960);-\* or for informalities of a minor nature which can be easily corrected by the bidder without altering his proposal in any material respect (FSH 6323.21, item 16d(3)).

c. Informalities of Substance. Informalities of substance are material deviations from requirements affecting price, quantity, \*-or quality, or the rights of other bidders, -\* or conditions imposed by a bidder to limit his liability to the Government. Rejection of bids in this category is mandatory. To be acceptable, all bids must conform in every material respect to the bid invitation. This precludes the deletion after opening of bids of objectionable conditions imposed by the bidder, even though such deletion would result in a responsive bid (34 Comp. Gen. 24; 30 Comp. Gen. 179; 31 Comp. Gen. 660). Circumstances permitting, the contracting officer may, at his discretion, reject all bids responding to an invitation and readvertise. Examples of informalities of substance are:

(1) Bids containing conditions to limit or entirely relieve the bidder's liability for delays or failure to perform.

(2) Bids differing in substance to affect the sufficiency or price of the material offered.

(3) When the otherwise acceptable bid offers material subject to prior sale, normally such bids are for rejection. This reservation obviously would have the effect of varying the bidder's obligation with respect to delivery which is not offered to his competitors, as

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he may elect to abide by the bid or refuse delivery, whichever is advantageous at the time (34 Comp. Gen. 24; 34 Comp. Gen. 82; Comp. Gen. B-123061, Mar. 11, 1955, unpublished). If, however, the items involved are recognized to be in short supply and there is no evidence of an attempt by the low bidder to second-guess his competitors, the contracting officer having cognizance of the unfavorable market should confirm availability and immediately make award.

Reasons for rejecting a low bid must be clearly stated in the statement of award.

(4) If an amendment or addendum to an invitation affects the price, quantity, or quality of the procurement to be made, it is the general rule that failure of the bidder to acknowledge the amendment or addendum is not an informality which can be waived (Comp. Gen. B-135641, May 22, 1958).

(5) Where a bid invitation specifically requires the submission of descriptive material with the bid, and a bidder fails to comply with this requirement, he has not complied with the essential requirements of the specifications, and failure to so comply becomes a deviation of substance which cannot be waived (5 AR 274).

\*-(6) When a bid invitation specifically requires the submission of a bid sample of a product the bidder proposes to furnish as a part of bid, and a bidder fails to comply with this requirement, he has not complied with the essential requirements of the specifications, and failure to so comply becomes a deviation of substance which cannot be waived (5 AR 274).

(7) Failure of a bidder to fully comply with bid invitation requirements for submission of a bid bond or other bid guarantee requires the rejection of such bid as being nonresponsive (38 Comp. Gen. 532) except in these situations:

(a) Where only a single otherwise acceptable bid is received. In such cases the Government may or may not require the furnishing of the bid guarantee before award. The acceptance of the bid will bind the bidder regardless of whether a bid guarantee is required (39 Comp. Gen. 796).-\*

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\*(b) Where the amount of the bid guarantee submitted, though less than the amount required by the invitation for bids, is equal to or greater than the difference between the price stated in the bid and the price stated in the next higher acceptable bid.

(c) Where an otherwise adequate bid guarantee becomes inadequate as a result of the correction of a mistake in bid, if the bidder will increase the amount of the bid guarantee (1) in proportion to the authorized bid correction or (2) by an amount sufficient to conform to the situation in item (b) (39 Comp. Gen. 209).

(d) Where the bid guarantee is received late and the late receipt may be waived under the rules established in FSH 6323.12 for consideration of late bids. - \*

d. Offers of Lesser Quantities Than Required. There are instances where adherence to a narrow interpretation of the above would result in unnecessary hardship to the Government. For example, the field of competition may have been adequately covered and yet, owing to unexpected conditions within the trade, bidders would be unable to offer the quantity required by the invitation for bids. In such an event, if the material was needed for immediate use, awards could be made to the successive low

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bidders until the desired quantity was obtained, provided that prices were reasonable. However, if a higher bidder offered more than was required to make up the total required, he could be requested, but not required, to accept an award for less than the amount offered by him. In no event should awards be made for a greater quantity than that on which prices were requested in the invitation for bids.

e. Anticipation of a Short Market. Deviation from the usual procedures, while perhaps perfectly proper, often leads to misunderstandings by the bidders or others concerned with the transaction. When it is anticipated or suspected that prospective bidders may not be in position to offer the total amount needed by the Government, it would be wise to provide for dealing with such offers by including appropriate language in the advertised specifications.

f. F.O.B. Shipping Point Vs. Destination Prices. As a general rule, prices are solicited on a destination basis only. On occasion, however, in response to such an advertisement, some bidders may quote f. o. b. shipping point and one such bid, transportation cost considered, may be low by comparison with the bids on a destination basis. If so, the following procedure should be applied in making the award: The shipping point quotation should be accepted unless there is a good reason to believe that a readvertisement soliciting prices both f. o. b. shipping point and at destination would affect the prices of those bidders already quoting on a destination basis only. In normal circumstances, it is logical to assume that the shipping point prices of the bidder quoting on a destination basis would be the same as the delivered prices minus the transportation cost. Consequently a readvertisement should not result in any change in the competition.

16. Contingent or Other Fees for Soliciting or Securing Contracts.

a. Purpose. This section explains the procedures and considerations that are applicable to bids or proposed contracts in connection with the covenant against contingent fees and the representation and agreement relative thereto.

b. General Principles and Standards Applicable to the Covenant

(1) Use of Principles and Standards. The principles and standards set forth herein are intended to be used as a guide in the negotiation, award, administration, or enforcement of Government contracts.

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(2) Contingent Character of the Fee. Any fee, whether called commission, percentage, brokerage, or contingent fee, or otherwise denominated, is within the purview of the covenant if, in fact, any portion thereof is dependent upon success in obtaining or securing the Government contract or contracts involved. The fact, however, that a fee of a contingent nature is involved does not preclude a relationship which qualifies under the exceptions to the prohibition of the covenant.

(3) Fees for Information. Contingent fees paid for information leading to obtaining a Government contract or contracts are included in the prohibition and, accordingly, are in breach of the covenant unless the agent qualifies under the exception as a bona fide employee or a bona fide established commercial or selling agency maintained by the contractor for the purpose of securing business.

(4) Improper Influence. The term "improper influence" means influence, direct or indirect, which induces or tends to induce consideration or action by any employee or officer of the United States with respect to any Government contract on any basis other than the merits of the matter.

(5) Exceptions to the Prohibition. Bona fide employees and bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business are excepted from the prohibition of the covenant.

(6) Bona Fide Employee. The term "bona fide employee," for the purpose of the exception to the prohibition of the covenant, means an individual (including a corporate officer) employed by a concern in good faith to devote his full time to such concern and no other concern and over whom the concern has the right to exercise supervision and control as to time, place, and manner of performance of work. The hiring must contemplate some continuity and it may not be related only to the obtaining of one or more specific Government contracts.

An employee is not bona fide who seeks to obtain any Government contract or contracts for his employer through the use of improper influence or who represents himself as being able to obtain any Government contract or contracts through improper influence. A person may be a bona fide employee whether his compensation is on a fixed salary basis or, when customary in the trade, on a percentage, commission, or other contingent basis or a combination of the foregoing.



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**Note:** It is recognized that a concern, especially a small business concern, may employ an individual who represents other concerns. The factors set forth in item (7) below (except in the sixth paragraph thereof) shall be applied to determine whether such an individual comes within the exception to the prohibition of the covenant.

**(7) Bona Fide Established Commercial or Selling Agency Maintained by the Contractor for the Purpose of Securing Business.** An agency or agent is not bona fide which seeks to obtain any Government contract or contracts for its principals through the use of improper influence or which represents itself as being able to obtain any Government contract or contracts through improper influence.

In determining whether an agency is a "bona fide established commercial or selling agency maintained by the contractor for the purpose of securing business," the factors set forth below shall be considered. They are necessarily incapable of exact measurement or precise definition, and it is neither possible nor desirable to prescribe the relative weight to be given any single factor as against any other factor or as against all other factors. The conclusions to be reached in a given case will necessarily depend upon a careful evaluation of the agreement and other attendant facts and circumstances.

The fees charged should not be inequitable and exorbitant in relation to the services actually rendered. That is, the compensation should be commensurate with the nature and extent of the services and should not be excessive as compared with the fees customarily allowed in the trade concerned for similar services related to commercial (non-Government) business. In evaluating reasonableness of the fee, there should be considered services of the agent other than actual solicitation; for example, technical, consultant or managerial services, and assistance in the procurement of essential personnel, facilities, equipment, materials, or subcontractors for performance of the contract.

The selling agency should have adequate knowledge of the products and the business of the concern represented, as well as other qualifications necessary to sell the products or services on their merits.

There should ordinarily be a continuity of relationship between the contractor and the agency. The fact that the agency has represented the contractor over a considerable period of time is a factor for favorable consideration. It is not intended, however, to disqualify newly established contractor-agent relationships where a continuing relationship is contemplated by the parties.

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It should appear that the agency is an established concern. The agency may be either one which has been in business for a considerable period of time or a new agency which is a presently going concern and which is likely to continue in business as a commercial or selling agency in the future. The business of the agency should be conducted in the agency name and characterized by the customary indications of the conduct of a regular business.

The fact that a selling agency confines its selling activities to the field of Government contracts does not, in and of itself, disqualify it under the covenant. The fact, however, that the selling agency is employed to secure business generally, that is, to represent the concern in connection with sales to the Government as well as regular commercial sales to non-Government activities, is a factor entitled to favorable consideration in evaluating the case as one coming within the authorized exception. Arrangements, confined, however, to obtaining Government contracts, particularly those involving a selling agency organized immediately prior to or during periods of expanded procurement resulting from conditions of national emergency, must be closely scrutinized.

c. Use of Standard Form 119. The Administrator of General Services Administration has prescribed the use of SF-119, Contractor's Statement of Contingent or Other Fees for Soliciting or Securing Contract, in the manner indicated below.

(1) Required Use. Whenever a bidder or prospective contractor gives an affirmative answer to either part of the representation, he shall be required to execute SF-119. The form shall be used also in any other case where it is desired to obtain information of the nature developed by the form. When, after use of the form, further information is required, it may be obtained in any appropriate manner. Submission of the form shall be required, normally, only of successful bidders and contractors. No alterations may be made in the form.

(2) Statement in Lieu of Standard Form 119. Any bidder or proposed contractor who has previously furnished an SF-119 (December 1952 ed.) to the office issuing the invitation or negotiating the contract may be permitted to accompany his bid, or submit in connection with the proposed contract, a signed statement (a) indicating when such completed form was previously furnished, (b) identifying by number the previous invitation or contract invitation or contract in connection with which such form was submitted, and (c) representing that the statements in such previously furnished form are applicable to such subsequent bid or

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contract. In such case, submission of an additional completed SF-119 need not be required.

d. Failure or Refusal to Furnish Representation and Agreement. Each agency shall take the necessary action to assure that the indicated successful bidder or proposed contractor has furnished a representation (negative or affirmative) and agreement in those cases specified. In consideration of a bid or proposed contract, the procedure set forth below shall be followed:

(1) Negative Representation. If the representation is in the negative, such representation may be accepted and award made or offer accepted in the usual manner.

(2) Affirmative Representation. If either part of the representation is in the affirmative, a completed SF-119 shall be requested as provided in item c above. In the case of formal advertising, the making of an award in accordance with established procedure need not be delayed pending receipt of the form. In the case of negotiation, however, the proposed contractor shall be required to file a completed SF-119 prior to acceptance of the offer or execution of the contract. If it is considered that the interest of the Government would be prejudiced by such delay, a full report of the circumstances should be forwarded, through official channels, to the Office of Plant and Operations for determination of proper action.

(3) Failure to Furnish Representation. If the successful bidder or proposed contractor fails to furnish the representation and agreement, such failure shall be considered a minor deviation; and, prior to award, such bidder or proposed contractor shall be afforded a further opportunity to furnish them. A refusal or failure to furnish the data after such opportunity has been afforded shall require rejection of the bid or offer.

e. Failure or Refusal to Furnish Standard Form 119. (Item d(2) above.) If the successful bidder or proposed contractor, upon request refuses or fails to furnish a completed SF-119, or a statement in lieu thereof, as provided in item c(2) above, the complete file, including all bids or offers received, all correspondence relative to the failure or refusal, and any other pertinent documents, together with recommendations of the agency, should be forwarded through official channels to the Office of Plant and Operations for determination of appropriate action, as follows:

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(1) If an award has not been made or offer accepted, determination whether the bid or offer should be rejected.

(2) If the contract has been awarded or offer accepted, determination of what action shall be taken, such as making an independent investigation or considering the eligibility of the contractor as a future contractor in accordance with FSH 6324.

f. Misrepresentations or Violations of the Covenant Against Contingent Fees. In case of misrepresentation, violation or breach of the covenant against contingent fees, or some other relevant impropriety, one or more of the actions listed below should be taken, as appropriate. In cases where there is doubt about the action properly to be taken, the matter should be referred through official channels to the Office of Plant and Operations.

(1) If an award has not been made, or offer has not been accepted, determine whether the bid or offer should be rejected. In cases where the contracting officer is satisfied that the misrepresentation or violation was intentional or willful, rejection should be made.

(2) If an award has been made, or offer has been accepted, take action to enforce the covenant in accordance with its terms, that is, as the best interests of the Government may appear, annul the contract without liability or recover the amount of the fee involved.

(3) Consider the future eligibility of the bidder or contractor as a future contractor in accordance with item 20 under FSH 6324.11.

(4) Determine whether the case should be referred to the Department of Justice with respect to determining matters of fraud or criminal conduct (Item 17 under FSH 6323.21).

g. Preservation of Records. Agencies shall preserve, for enforcement or report purposes, at least one executed copy of any representation and completed SF-119, or statement in lieu of that form, together with a record of any other pertinent data, including data as to action taken.

h. Exceptions. The representation and agreement specified above need not be required in connection with the following:

(1) Advertised contracts in which the aggregate amount involved does not exceed \$25,000.

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(2) Negotiated contracts in which the aggregate amount involved does not exceed \*-\$2,500.-\*

(3) Negotiated contracts for perishable subsistence supplies in which the aggregate amount involved does not exceed \$25,000.

17. Fraudulent Bids. The United States may reject a bid in case of fraud. If, in the opinion of the contracting officer, bids received indicate \*-collusion, follow-the-leader pricing, -\* rotated low bids, or other possible evidence of violation of the antitrust laws, all bids concerned should be forwarded to the Division of Administrative Services, with a full statement of the facts.

18. Personal Interest in Contracts. The policy in contractual relations with a firm or corporation wherein a Forest Service employee is an officer or agent is covered in 27 Comptroller General 736. The statutory rule referred to may be found in 18 United States Code 434.

Contracts between the Government and its employees are not prohibited by statute except where an employee of the Government acts as agent both for the Government and the contractor in the particular transaction or where the service to be rendered under the contract is such as could have been required of the contractor in his capacity as an employee. 18 U.S.C. 93; 5 id. 69, 70; 21 Comp. Gen. 705. However, as pointed out in 14 Comp. Gen. 403, referred to by you, this office has held that contracts between the Government and its employees are open to criticism on the ground of possible favoritism or preferential treatment and should not be entered into except for the most cogent reasons. Also, see 5 Comp. Gen. 93; 21 id. 705; 25 id. 690.

No officer or employee of the Forest Service who is in position either to influence the award of a contract with the service, or to cause purchase of supplies to be made for the Service, shall be interested in any firm, company, or corporation doing business with the Forest Service unless such interest shall be disclosed in writing and approved by the Chief in advance of the award of any contracts by such officer or employee.

19. Contracts With Federal Employees for Purchases by Forest Service. Contracts with Federal employees for the purchase of articles or services shall not be entered into without the prior approval of the Department. For exception, see FSH 6316.2.



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20. Discount Consideration. Offers of discounts are to be considered equally as much a part of bids as other features thereof. If, by reason of the offered discount, a bid is lower than other bids offering no discount or a lower rate of discount, the bid should be accepted as the low bid, unless, in the judgment of the contracting officer, the time required for receipt, inspection, and payment will not permit realization of the discount.

Determination of award where discounts are offered in bids is a matter for decision by the purchasing officer.

Bids involving different discount terms will be considered in the light of the terms offered and that bid offering the most advantageous discount should be accepted. For example, a 2-percent 30-day discount is more advantageous than a 2-percent 20-day; a 2-percent 20-day discount is more advantageous than a 2-percent 10-day.

When cash discount terms are such that the most advantageous period cannot be definitely determined, they should be considered as equal. For example, a 2-percent 15- or 20-day versus 2-percent 10th-proximo is indefinite, depending upon actual date of shipment or delivery.

In 18 Comptroller General 743 it is held that discounts of 2 percent for payment within 30 days are to be regarded in making awards as more advantageous to the Government than bids offering 2-percent 10th-proximo.

If a net bid is equally low with a discount bid (after deducting the discount), the net bid may be considered the most favorable, as discount has to be earned by special handling.

\*- Clause 7(b)-\* printed on the reverse of SF-33 reads:

(b) In connection with any discount offered, time will be computed from date of delivery of the supplies to carrier when delivery and acceptance are at point of origin, or from date of delivery at destination or port of embarkation when delivery and acceptance are at either of those points, or from date correct invoice or voucher (properly certified by the contractor) is received in the office specified by the Government if the latter date is later than the date of delivery.

Where SF-33 is used, the above terms constitute a part of the contract and must govern with respect to time discounts, unless specifically qualified by bidder. If a bidder refuses to accept

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this provision and offers substitute terms, the latter must govern. A contracting officer cannot force a bidder to accept the cash discount terms provided in the standard clause quoted above; nor, in case of refusal, can he disregard an otherwise acceptable bid as not being responsive to the invitation. He can, however, disregard the substitute offer in determining award, if it is administratively determined that compliance with the substitute time discount terms is not practicable of accomplishment.

In respect to open-market purchases without written quotations, purchasing officer should have an advance understanding with vendors to cash discounts and, if possible, arrange with them to agree to the usual Government terms. There is no mandatory provision governing cash discount terms on open-market purchases and vendors should not be coerced into compliance with usual terms by threatening loss of business, or otherwise. In the absence of an advance understanding or agreement with a vendor as to cash terms, the terms offered by him must be observed.

21. Samples. When an invitation for bids includes performance requirements only, as differentiated from technical requirements, and provides for submission of samples to represent the bidder's offer with award conditioned on test and examination of samples submitted, failure to submit a sample by the time fixed for the bid opening must be treated as a late bid. When the bid specifications clearly set forth the minimum technical requirements, and a sample is requested for the purpose of ensuring that what the bidder proposes to furnish will, in fact, meet such requirements, failure to submit a sample may be waived as a minor informality. However, a sample submitted after the time fixed for the bid opening cannot modify the bid and the award must be made to the low bidder notwithstanding that a sample submitted late is considered as not meeting the technical requirements. In such cases, the award should be made and the contractor advised to submit samples meeting specifications. In the event of his failure to do so or deliver items meeting specifications, the contract should be terminated for default (17 Comp. Gen. 940).

- \*- Bidders should not be required to furnish a bid sample of a product they propose to furnish unless there are certain characteristics of the product which cannot be described adequately in the applicable specification or purchase description, thus necessitating the submission of a sample to ensure procurement of an acceptable product. It may be appropriate to require bid samples, for example, where the procurement is of products-\*

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\*-that must be suitable from the standpoint of balance, facility of use, general "feel," color, or pattern, or that have certain other characteristics which cannot be described adequately in the applicable specifications (FSH 6338.2).

The reasons why acceptable products cannot be procured without the submission of bid samples shall be set forth and filed in the case file, except where such submission is required by the formal specifications (Federal, military, departmental, etc.) applicable to the procurement.

When it is necessary to request samples and make award on the basis of the sample most nearly meeting the Government requirements, the invitation for bids shall (1) state the number and, if appropriate, the size of the samples to be submitted and otherwise fully describe the samples required, (2) state clearly the purpose for which the samples are needed and the requirements against which they will be tested or evaluated, and (3) include a clause substantially as follows:

## BID SAMPLES

- (a) Bid samples, in the quantities, sizes, etc., required for the items so indicated in this Invitation for Bids, must be furnished as a part of the bid and must be received before the time set for opening bids. Samples will be evaluated to determine compliance with the specifications or other requirements of this Invitation for Bids.
- (b) Failure of samples to conform to the requirements of this Invitation for Bids will require rejection of the bid. Failure to furnish samples by the time specified in the Invitation for Bids will require rejection of the bid, except that a late sample transmitted by mail may be considered under the provision for considering late bids, as set forth elsewhere in this Invitation for Bids.
- (c) Products delivered under any resulting contract shall conform to the approved sample as to the characteristics for which the sample was required and shall conform to the specifications as to all other characteristics. - \*

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\*- [The clause prescribed above may be modified by adding the following paragraph to provide that the requirement for furnishing samples may be waived as to a bidder who offers a product previously or currently being procured or tested by the procuring activity and found to comply with specification requirements conforming with those in the current invitations for bids.]

(d) However, the requirement for furnishing samples may be waived as to a bidder if (1) the bidder states in his bid that the product he is offering to furnish is the same as a product he has offered to the (1/ ) on a previous procurement and (2) the contracting officer determines that such product was previously procured or tested by the (1/ ) and found to comply with specification requirements conforming in every material respect to those in this Invitation for Bids.

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1/ Contracting officer shall insert "procuring activity" or other appropriate designation. - \*

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## 22. Contract Bonds

a. Acceptable Sureties. The Treasury Department has issued and keeps currently revised a list of bonding companies acceptable as sureties on Government contracts. A copy of such list, entitled U.S. Treasury List of Companies Holding Certificate of Authority as Acceptable Sureties, is available from the U.S. Treasury Department Division of Accounts, Surety Bond Section, Washington 25, D.C.

### b. Bid Bonds

(1) Failure To Furnish Bid Bond. Failure to submit bid security before the time set for bid opening will cause rejection of the bid as being nonresponsive (Comp. Gen. B-137319, Feb. 5, 1959).

(2) Handling of Bid Securities Other Than Bonds. Collections which at the time received cannot be definitely identified for credit to the proper account should be deposited for credit to the agency's deposit

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fund suspense account (7 GAO 3540.10). Thus, the check or money order of the successful bidder should be deposited in the Suspense Forest Service account and refund made when a satisfactory performance bond is furnished. In the case of deposits made by unsuccessful bidders, the responsible Government officer should be guided by 7 AR 148e and Comptroller General A-51607, A-44002, to the Secretary of Agriculture, April 8, 1935. The pertinent part of the letter is as follows:

It is believed that greater protection can be assured the Government and others interested by requiring checks and cash received as deposits to secure bids, the performance of contracts, or the safe return of plans and specifications which cannot be returned to the depositors within 24 hours after bids have been opened and considered, to be turned over to disbursing officers for deposit and accounting, and procedure accordingly is desired.

Thus, all cash, checks, or money orders received as deposits to secure bids, the performance of contracts, or the safe return of plans and specifications which cannot be returned to the depositors within 24 hours after bids have been opened, or the remittance otherwise received, shall be deposited in the Suspense Forest Service account; except that remittances, other than cash, which can be returned within 1 week need not be deposited.

Incoming remittances received and deposited in connection with contracts should be recorded on Form 6500-101, Report of Remittances Received, and the receipted copy retained in the contracting officer's contract file.

c. Performance Bonds

(1) Ability To Furnish Required Performance Bond. If there is any doubt about a bidder's ability to furnish required bonds, his qualifications and financial capacity should be investigated by the contracting officer prior to making award. In Comptroller General Decision B-132231 of October 16, 1957, it was held that:



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Protest of low bidder whose bid was rejected on basis of administrative determination that he did not possess requisite financial capacity to perform \$53,000 contract is without merit since selection of responsible bidder and minimum needs requirement of Government is responsibility of contracting agency, and record establishes that bid was rejected only after extensive investigation of bidder's financial capabilities.

(2) Failure To Furnish Required Performance Bond. When the advertised specifications definitely require the furnishing of a performance bond and, through inadvertence, oversight, or some other cause, the contractor fails to furnish or is not notified to furnish the required bond, and performance is satisfactorily completed under the contract, there shall be deducted from the money due the contractor an amount equal to the premium on the performance bond, which should have been furnished in accordance with the terms of the accepted bid. In order to minimize such occurrences, contracting officers will exercise every precaution to prevent performance of contracts for which performance guarantees are required until such guarantees are received (15 Comp. Gen. 688).

(3) Certified Check or Cash Deposit in Lieu of Contract Performance Bond. In 22 Comptroller General 671 is found the following decision on this subject:

Where it is administratively determined that the interests of the Government require the furnishing of security for the faithful performance of a contract of a nature other than that for which the furnishing of a performance bond is required by statute, and a provision is inserted in the invitation for bids, and in the resulting contract, requiring the successful bidder to furnish a performance bond, there is no objection to the acceptance of a certified check or cash deposit in lieu of the stipulated bond.

Where a performance bond is required by the advertised specifications, it is presumed, as a general rule, that the contractor included as a part of the bid price an amount equal to the premium on a corporate surety bond and, if the bond is not furnished, an amount equal to the premium is required to be deducted from the contract price, but where a contractor assumed in good faith that a certified check would be acceptable to the Government in lieu of a performance bond, there is no basis for the assumption that the bid price included the cost of procuring a bond involving the payment of a premium.

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d. Government Bonds or Notes in Lieu of Sureties on Bid (or Performance Bond). In lieu of sureties on bid or performance bonds, there may be furnished bonds or notes of the United States at par value together with an agreement authorizing the Government to collect or sell such bonds or notes so deposited, in case of any default (6 U.S.C. 15). "Bonds or notes of the United States" means any public debt obligation of the United States and any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal, by the United States. The bonds or notes deposited, and such other United States bonds or notes as may be substituted from time to time as such security, may be deposited with the Treasurer of the United States, or Federal Reserve Bank, or other depository duly designated for that purpose, which shall issue receipt therefor describing such bonds or notes so deposited.

e. Return of Bonds or Notes. Return of bonds or notes deposited in lieu of surety or sureties shall be made as soon as it shall be determined that such security is no longer necessary. The return of such securities shall be at the obligor's risk and expense. In the absence of written instructions and remittance to cover expenses, they shall be forwarded by express collect, except that registered bonds or notes not assigned in blank or for exchange for coupon bonds or notes may be forwarded by uninsured registered mail. Upon complete or partial return to the obligor of bonds or notes deposited as security, the contracting officer shall require from the obligor a receipt in duplicate and shall further require the obligor, in case of complete return, to give receipt thereof.

f. Review and Approval of Bonds. The contracting officer is responsible for the review and approval of bonds as to form and sufficiency. Surety bonds will be reviewed to determine that the bonding company is on the approved Treasury listing described in item a, and that the person signing the bond for the surety has the authority to do so. Such authority may be requested in the form of a power of attorney or affidavit by an officer of the bonding company, indicating that the person signing the bond is duly authorized to act for the company. The bond will be reviewed to determine that it is completed in accordance with the instructions on the bond form. Other than surety bonds will be handled in accordance with items b, c, and d.

g. Filing of Surety Bonds. Surety bonds of the accepted bidder are to be filed with the original of the contract.

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h. Personal Checks. Such checks are undesirable; but when received in lieu of the stipulated bond, they should be deposited immediately. Further contractual action should be held in abeyance pending clearance.

\*- i. Failure To Submit Proper Bid Guarantee. Failure of a bid to fully comply with bid invitation requirements for submission of a bid bond or other bid guarantee requires the rejection of such bid as being nonresponsive (38 Comp. Gen. 532) except in these situations:

(1) Where only a single otherwise acceptable bid is received. In such cases the Government may or may not require the furnishing of the bid guarantee before award. The acceptance of the bid will bind the bidder regardless of whether a bid guarantee is required (39 Comp. Gen. 796).

(2) Where the amount of the bid guarantee submitted, though less than the amount required by the invitation for bids, is equal to or greater than the difference between the price stated in the bid and the price stated in the next higher acceptable bid.

(3) Where an otherwise adequate bid guarantee becomes inadequate as a result of the correction of a mistake in bid, if the bidder will increase the amount of the bid guarantee (1) in proportion to the authorized bid correction or (2) by an amount sufficient to conform to the situation in item (2) (39 Comp. Gen. 209).

(4) Where the bid guarantee is received late and the late receipt may be waived under the rules established in FSH 6323.12 for consideration of delayed bids. - \*

23. Annual Contract Bonds. Information concerning annual bid or performance bonds on file with the Office of Plant and Operations is circularized through the medium of Plant and Operations memorandums. The purpose of the annual bonds is to eliminate repeated posting of individual bonds for individual cases by companies receiving frequent awards by the Department. Annual bonds, whether bid or performance, are usually departmentwide, that is, the bond is to cover any contract within the Department, regardless of the agency concerned. When a bidder has on file with the Office of Plant and Operations an annual bond of sufficient amount to cover the contract in question, no additional surety is required.

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24. Notations or Marking on Bids. In no circumstances will any individual in the procurement office make any marks or notations on the bid or its accompanying documents. If, through error or for some other reason, marks are made on a bid or its accompanying documents, the markings should not be erased or eradicated; instead, the individual so marking the bid shall file a signed explanation with the bid file for future reference, showing when, how, and why the notation or markings were made. If the marked bid is accepted, explanation with regard thereto should be made on bid file.

25. Protests of Bidders

a. Fair Handling by Procurement Officer. Protests from bidders against methods employed in preparing invitations and drawing specifications, making awards, and for other reasons must be given proper consideration and handled with fairness to all concerned, \*-whether submitted before or after award. -\*

b. Protest Causes. A protest is usually caused by the following reasons:

- (1) Too short a period allowed for submission of bids.
- (2) Too short a delivery period.
- (3) Specifications ambiguous and preventing intelligent bidding.
- (4) Specifications discriminatory as to type of materials.
- (5) Specifications restricted practically to one make.
- (6) Method used in determining awards.
- (7) Materials offered by low bidder fail to meet advertised specifications.

(Specifications should be so drawn as to eliminate protests based on these factors.)

c. \*-Protests Before Award. If award has not been made, the contracting officer may require that written confirmation of an oral protest be submitted by a specified time and inform the protester that award will be withheld until the specified time. If the written protest is not received-\*

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\*-by the time specified, the oral protest may be disregarded and award may be made in the normal manner unless the contracting officer, upon investigation, finds that remedial action is required, in which event such action shall be taken.

(1) In appropriate cases, notice of a protest will be given to bidders affected thereby. For example, when a protest against the making of an award is received and the contracting officer determines to withhold the award pending disposition of the protest, the bidders whose bids might become eligible for award should be informed of the protest and requested, before expiration of the time for acceptance of their bids, to extend the time for acceptance (with consent of sureties, if any) in order to avoid the need for readvertisement. In the event of failure to obtain such extension of bids, consideration should be given to proceeding with award under item c(3).

(2) Where a protest has been lodged with the procuring agency, the views of the Office of the Comptroller General regarding the protest should be obtained before award whenever such action is considered to be desirable. Where it is known that a protest against the making of an award has been lodged direct with the Comptroller General, a determination to make a award under item c(3) must be approved at an appropriate level above that of the contracting officer. Although award need not be withheld pending final disposition by the Comptroller General of a protest, a notice of intent to make award in such circumstances shall be furnished the Comptroller General, and formal or informal advice should be obtained concerning the current status of the case prior to making the award.

(3) Where a written protest against the making of an award is received, award shall not be made until the matter is resolved, unless the contracting officer determines that (1) the items to be procured are urgently required, (2) delivery of performance will be unduly delayed by failure to make award promptly, or (3) a prompt award will otherwise be advantageous to the Government. - \*

If award is made under item c(3), the contracting officer shall document the file to explain the need for an immediate award, and shall give written notice of the decision to proceed with the award to the protester and, as appropriate, to others concerned.

d. Protests After Award. A protest received after award shall be handled in accordance with the applicable provisions in item c. - \*



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26. Tabulation of Bids. To determine the lowest or most advantageous bid, a comparison of all bids received must first be made. This is best accomplished by abstracting essential data from each bid and tabulating them on a bid-comparison sheet which should show, for each item, name of bidder, shipping point, freight rates and charges, weight, time of delivery, quoted price, cash discount, net delivered price, option, and any other information essential to proper consideration of all bids. Each bid should be checked for:

- a. Proper signature.
- b. Exceptions or qualifications of specifications by bidder.
- c. Obvious errors in prices.
- d. Errors in extension of unit prices.
- e. Samples (if required).
- f. Enclosures (a letter or descriptive circular may qualify and constitute a part of bid).
- g. Bond or surety (if required).
- h. Option period.

27. \*-Telegraphic Bids (FSH 6322.1, item 12)-\*

28. Tax Evaluation in Consideration of Bids

a. Bid Prices May Include or Omit Tax. In 17 Comptroller General 615 it is held that when it is not shown affirmatively and clearly on the face of a bid, as submitted, that applicable taxes are excluded from the bid price, it is to be presumed that taxes are included therein, the bid is to be evaluated on that basis and, if accepted, there is no legal authority for thereafter furnishing the contractor with tax-exemption certificate. It is further held that there is no legal authority to require bidders to show the amount of taxes applying to the items in the bid, but that the bidder is free to submit prices either inclusive or exclusive of the tax and, if inclusive, to consent or not consent to its deduction from the amount of the bid price. However, if the prices submitted are claimed to be exclusive of taxes, or are inclusive of taxes and bidder is willing to have the amount thereof deducted from the bid price and to accept a tax-exemption certificate in lieu thereof, it would be necessary for bidders to state the amount of taxes involved with respect to each item.

b. Lowest Bid Not To Be Rejected Because Tax Included. The bid of the lowest responsible bidder should not be rejected solely because it is inclusive of applicable taxes and, if accepted, it may not as a matter of right be further reduced.

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c. Basis for Accepting Bids When Tax Included. Bidders are informed that in determining awards, (1) with Federal taxes, all prices will be adjusted to a tax-included basis; and (2) with State or local taxes, the net figure will be used where the bidder indicates that such taxes are included but that he is willing to accept deduction of such taxes from the quoted price with the issue of tax-exemption certificate, otherwise quoted prices will be used.

29. Conditional Bids. Where bidders incorporate in their bids stipulations not contained in the advertised specifications, such bids should be disregarded as not responsive to the terms offered. If a bidder attached a rider to his proposal to take care of possible increase in price which might arise in various ways, he thereby makes the bid too indefinite and uncertain for consideration and not ordinarily subject to acceptance.

30. Split Items. When bids are so drawn as to permit splitting of items in anticipation that no one dealer can supply the entire quantity required, award must be made to the lowest bidder for the full quantity specified by him, and in sequence to the remaining low bidders for the full quantity specified by each until the full requirements of the bid are met. As between two or more bidders offering different quantities at the same price, preference should be given to the bidder specifying the greater quantity. In split item awards, where the bidder last in sequence receives an award for a lesser quantity than that which he offers to furnish, he is not obligated to accept award and may refuse to perform.

31. Leeway Clause Consideration. Where bid specifications contain a leeway clause permitting the Government to purchase variable quantities (usually not exceeding 25 percent more or less than quantity specified), the awarding officer must guard against the possibility of making an award in excess of his authority. For example, if a purchase is contemplated where a maximum limitation for supervisor office field acceptance is \$1,000 and the bid price is \$900, the bid, if it carries a 25 percent leeway clause and is accepted without qualification, would permit purchase thereunder up to \$1,125 which would exceed the authority for field acceptance approved by the Office of Plant and Operations. If, however, acceptance is made for \$900 or \$1,000 with a definite stipulation in the notice of award that the award is final and that no additional purchase will be made under the leeway clause, the bid is proper for field acceptance. Similarly, if the bid is for \$1,200 and carries a 25 percent leeway clause, acceptance may be made for \$900 or up to \$1,000, provided the same stipulation with respect to additional purchases is incorporated in notice of acceptance. The same principal will apply in awarding contracts at regional office and experiment station levels. The authority granted by the Office of Plant and Operations definitely limits the amount of the obligation which may

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be incurred by field officers, and so long as the actual obligation does not exceed the established limitation there is no evasion.

Consideration should be given to vendors in buying under leeway provisions of a bid. Ordinarily, higher or lower quantities should be ordered at the time award is made, except for running contracts. If this is not feasible, vendors should be informed of the estimated quantities to be bought and the approximate time orders will be placed so that they may protect themselves against such demands on the part of the Government without extra expense.

32. Bids Conflicting With Provisions of Bid Invitation. Where the bidder's proposal includes special clauses or provisions, such as clauses entirely relieving the bidder from responsibility in the event of fires, strikes, acts of God, etc., which are covered by the invitation to bid under the general provisions of SF-32, the bidder may be asked to delete these special provisions from his bid. A bidder failing to do so may have his bid rejected (20 Comp. Gen. 4).

33. Bids Subject to Prior Sale. Normally, when the otherwise acceptable bid offers material subject to prior sale, the bidder should be requested to remove that condition prior to any award. Such a bid would be for rejection if the bidder refuses to remove the condition. If, however, the market conditions are known to be unsteady, the needs of the Government are such that immediate action must be taken, or other conditions dictate a need for prompt action, the award should be made to that bidder by telegram stating that the award is subject to his immediate acceptance or rejection. Should the bidder then refuse to accept the award, his bid may be rejected and award made to the next low bidder with appropriate statement made on the bid file. As an alternative, where time is the important factor and there is but a slight difference between the low bid qualified subject to prior sale and the next low bid not so qualified, award may be made to the second low bid with appropriate showing on bid file to the effect that the low bid was offered subject to prior sale, citing the urgent need and the fact that slight difference in cost was offset thereby.

34. Codes of Fair Competition--Fair Trade Agreements. Certain industries operate under voluntary codes or trade agreements designed to eliminate unfair competition and to maintain profitable price levels. Several States have passed laws legalizing such trade agreements. Occasionally some bidder will make a bid which violates the code of his industry and after opening will attempt to withdraw or modify it. After opening, bids may not be withdrawn because they are not in conformity with such codes. Should the bidder refuse to perform after receiving notice of acceptance, the matter should be handled as outlined under item 14, FSH 6323.21.

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35. \*- Effect of Acceptance Period

a. Award Within Acceptance Period. As bids are opened, they should be carefully examined to note the acceptance periods designated by bidders for acceptance of their bids. Steps should then be taken to make an award as quickly as possible, and in time to ensure award prior to the expiration date of the period. Fluctuating elements affecting quoted prices usually enter into bidders' calculations, and prompt information as to whether or not they will receive the award should be given in order to maintain good business relations.

b. Notification to Bidder of Expiration of Acceptance. If the acceptance period of the successful bidder is about to expire and it is impossible to prepare the contract documents in time to reach the contractor before the expiration date, the successful bidder should be notified of award either by wire or letter, whichever is more practicable. Placing of a letter of notification or a confirmation copy of a telegram of notification in the mails prior to the expiration of the acceptance period generally constitutes acceptance of the proposal within the acceptance period. However, this practice should not be followed, except when actually necessary, since controversy may arise as to whether the award is binding.

c. Extension of Acceptance Period. Should administrative difficulties be encountered after bid opening which may delay award beyond bidders' acceptance periods, the several lowest bidders should be requested, before expiration of their bids, to extend the bid acceptance period (with consent of sureties, if any). The written extension, when granted, must be made a part of the bid acceptance.

d. Refusal of Bidder to Renew Acceptance Period. If the acceptance period of the low bidder expires prior to the time of awarding the contract and the bidder refuses to extend the period, award may be made to the next low bidder, provided it is otherwise acceptable and the price is just and reasonable. It will be necessary in such instances to explain on the statement of award the circumstances surrounding the failure to secure award prior to the expiration date with a showing that award to the next low bidder was to the best interest of the Government, and that no appreciable saving could be made by calling for new bids. - \*



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36. Architectural or Engineering Services (FSH 6316.3)

37. Brand Name Products or Equal. Bids offering articles which differ from brand name articles referenced in the invitation for bids shall be considered for award when the contracting officer determines, in accordance with the terms of the clause set forth in \*-item 13, -\* FSH 6338.2, that such articles are equal, insofar as the needs of the Government are concerned, to the articles referenced. Contracting officers are cautioned that a bidder offering articles other than the referenced brand names is obligated to furnish only the articles described in his bid and any attached descriptive material. Rejection of bids shall not be based on minor differences in design, construction, or features which do not affect the suitability of an article for its intended use.

Notices of award on brand name products or equal shall identify the specific articles (including any brand name or make or model number and any modifications of such brand name article specified in the bid) which the contractor has offered to furnish regardless of whether such articles are or are not of the brand name referenced in the invitation for bids \*- (FSH 6338.2).

38. Reporting Possible Antitrust Violations

a. General. Section 302(d) of the Federal Property and Administrative Services Act of 1949, as amended, requires, with respect to advertised procurements, that all violations of the antitrust laws be referred to the Attorney General when in the opinion of the agency head they evidence any violations of the antitrust laws.

b. Policy. All suspected violations of the antitrust laws relating to advertised procurements and to negotiated procurements where solicitation was made on a competitive basis shall be reported to the Office of Plant and Operations for necessary action.

c. Procedure. If, in the opinion of the contracting officer, bids or proposals received indicate collusion, follow-the-leader pricing, rotated low bids, or any other device intended to deprive the Government of full and free competition, all such bids or proposals and related documents, together with a full statement of the facts concerning the procurement, shall be forwarded through channels to the Office of Plant and Operations. -\*



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\*-39. Restrictions on Disclosure of Descriptive Literature. When a bid is accompanied by descriptive literature and the bidder imposes a restriction that such literature may not be publicly disclosed, such restriction renders the bid nonresponsive if it prohibits the disclosure of sufficient information to permit competing bidders to know the essential nature and type of the products offered or those elements of the bid which relate to quantity, price, and delivery terms. The provisions of this paragraph do not apply to unsolicited descriptive literature submitted by a bidder if such literature does not qualify the bid. Descriptive literature restricted by a bidder against public disclosure shall not be disclosed in a manner which would contravene the restriction without permission of the bidder.

40. Voluntarily Furnished Data. Under circumstances where the specifications in the bid invitation are adequate, bidders often attach to their bids descriptive literature not called for by the bid invitation or insert brand names, model numbers, etc., in their bid with no indication that any exception to the specifications is intended. The voluntary furnishing of this type of data, with nothing to evidence an intent to qualify the bid or to deviate from the advertised specifications, does not render such a bid nonresponsive. However, if there is a reasonable doubt that what the bidder offers meets advertised specifications, the contracting officer must ensure by warranty of the bidder or from his own resources that what the bidder offers will, or will not, meet specifications. If it will not meet specifications, the bid must be rejected. (36 Comp. Gen. 705; Comp. Gen. Dec. B-141253, Feb. 2, 1960.)

41. Reports of Identical Bids

a. General. Item 41 prescribes procedures for reporting information on identical bids in accordance with Executive Order 10936 of April 24, 1961 (26 F.R. 3555).

b. Policy. To discourage identical bidding in the procurement of property and services and in the sale of property pursuant to public invitations for bids; to reduce the costs of the Government; to aid in the enforcement of the antitrust laws and the maintenance of a competitive economy; and to provide the Attorney General with such information as may tend to establish the presence of a conspiracy in restraint of trade and which may warrant further investigation with a view to preferring civil or criminal charges.-\*

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c. Definitions. As used herein:

(1) The term "identical bids" means two or more bids received for the same line item of an invitation for bids issued under formal advertising procedures, or under small-business restricted advertising procedures (Federal Procurement Regulations, sec. 1-1.704(c); 41 CFR 1-1.704(c)), which (1) appear on the face of the bids to be identical as to unit price or total amount; or (2) are found, in the contracting agency's normal process of evaluating bids for award, to be identical as to unit price or total amount.

(2) The term "line item" means each object of procurement specified in an invitation for bids which, under the terms of the invitation, is susceptible to a separate contract award.

d. Bids To Be Reported. A report on Form DJ-1500, Identical Bid Report Procurement, shall be submitted whenever identical bids have been received in response to an invitation for bids calling for the procurement of property or services (including construction) or for the sale of property, except when one of the following circumstances governs:

(1) Bids are received only from foreign sources in response to invitations for bids requiring delivery and performance outside the United States, its possessions, and the Commonwealth of Puerto Rico.

(2) Bids or offers are solicited under other than formal advertising procedures (identical bids or offers received under small-business restricted advertising procedures are not exempt from the reporting requirement).

(3) The total bid value of all line items covered by the invitation is not more than \$10,000 (based, in the case of procurements, on the apparent low bid for each line item and, in the case of sales, on the apparent high bid for each line item).

(4) No identical bids are discovered in the contracting agency's normal process of evaluating bids for award and no identical bids are apparent on the face of the bids.-\*

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\*-(5) The bid value of the line item is not more than \$2,500 (based on the apparent low bid for such line item, in the case of procurements, and the apparent high bid for such line item, in the case of sales).

e. Information To Be Reported

(1) Procurements. When a procurement invitation results in the submission of identical bids to be reported under item d, a report shall be filed showing the entire bid proceedings for each line item on which identical bids are received. In addition, a copy of the invitation for bids and a copy of the completed abstract of all bids received shall be filed with the report, except that the abstract need not be furnished if the number of line items on the invitation exceeds 100, in which event the report shall be annotated to indicate (1) the number of line items and (2) the total number of bidders on the invitation. Two completed copies of the report with attachments shall be sent to the Washington office. A copy of the report shall be retained by the reporting office.

(2) Sales. When a sales invitation results in the submission of identical bids to be reported under item d, a copy of the invitation for bids and a copy of the completed abstract of all bids received, with identical bid prices (other than nominal or token bids) circled, shall be forwarded to the Washington office.

f. Submission of Reports. The Office of the Secretary is required to submit information requested in item e to the Attorney General, Washington 25, D. C., within 20 days following the disposition of all bids received in response to the invitation for bids involved, whether by the awarding of contract(s) or other action. See FSH 6322.1 for information to be obtained from bidders.-\*

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6324 - AWARD OF CONTRACT

1. Purpose. This code outlines the procedures governing the award of contracts, proper documentation of awards, distribution of contract documents, notification of acceptance to contractors, and related operations subsequent to the acceptance of bids.

2. Authority. In every procurement transaction it is of importance, before any award is made, that the procurement officer consider whether or not the particular transaction involved falls within the limits of his purchasing or contracting authority.

6324.1 - Award Requirements for All Types of Bids. There follows a detailed explanation of each bid award requirement:

1. Award to Lowest Bidder

a. Status. The lowest responsible bidder offering to deliver articles or render services in accordance with specifications is entitled to the award, if any is made. \*-If the time of delivery is not made a factor of award in the invitation for bids, there is no authority for rejection of a low bid and award to a higher bidder who specified a shorter time of delivery, unless the delivery time of the low bid is so long as to be unreasonable. When an initial award is made to a low responsible bidder for less than all of the items which he may be obligated to furnish, a statement should be included to the effect that subsequent awards for such additional items may be made to him within his acceptance period.

b. Award by Item. Awards are to be made item by item unless otherwise specified by the bidder or by the Government or where it is clearly to the advantage of the Government to accept the lowest aggregate bid meeting the specifications. In making an award on this form of bid, the lowest quotation in the aggregate must be considered in competition with the lowest quotations by items with freight and other elements of cost considered.

c. "All or None" Bids. With respect to offers made on an "all or none" basis, the Comptroller General has held:

With particular reference to the acceptance of bids on an all or none basis, there is, of course, no objection to giving consideration to bids submitted on such a basis, even if there is no specific provision to the effect in the advertisement for bids. However, there is no basis for the rejection of a bid merely because a bidder does not bid on but one item, if the supplies otherwise conform to the requirements of the advertised specifications. In other words, the law, Section 3709, Revised Statutes, contemplates that award will be made on the lowest bid received, item by item or by

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combination of items as appears in the interests of the United States. It is evident that the Procurement Officer in question is under the erroneous impression that provision in the Standard Form 33, Paragraph 1 (old Form 33), under the heading "Conditions," is authority for the rejection of a bid submitted on the basis of furnishing only one of the items. The provisions of the standard form are plain and specific and the purpose thereof is defeated by the procedure being followed by the Procurement Officer in question. It is to be understood, of course, that if a particular bid on an all or none basis is the lowest bid received as compared with others received item by item or combination of items, such bid would be for consideration if otherwise proper. (Decision Acting Comptroller General to the Secretary of the Treasury, A-97645, April 6, 1939, unpublished.)

## 2. Award to Other Than Lowest Bidder

a. Rejection. Low bids failing to meet the advertised specifications will be rejected unless the deviation from the specifications is minor in character and does not prejudice the rights of other bidders. All bids must be on an equal competitive basis to be considered in the award of the contract, as it is obviously unjust to other bidders to accept a bid failing to meet the advertised specifications. The advertised specifications must, of course, reflect the requirements of the service and the rejection of a bid failing to meet specifications necessarily means that the lower bid will not meet the requirements of the ordering bureau. The reasons for rejecting a lower bid must be clearly stated on the Comparative Bid Statement.

b. Minor Deviations. A low bid deviating but slightly from the advertised specifications may be accepted, provided the deviation is so minor in character as to have no reflection in the cost price of the material offered or does not change the specifications requirement in any material way that would affect competition. Where such bids are accepted, the reasons therefor must be clearly stated on the bid file.

Instances frequently arise where a satisfactory proposal is received which varies in some minor detail from original specifications. If such a proposal which fully meets the advertised service requirements of the Government meets the intent of the specifications in all essential details, and does



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not introduce an element of unfairness to competing bidders, the proposal must be accepted under the reserved right to waive informalities (FSH 6323.21, item 15).

Good judgment must be used by the awarding officer in each case where there is a deviation, to avoid possible complications with bidders or the General Accounting Office. Where the deviation is other than minor and the item satisfactory, it may be to the Government's interests to readvertise with amended specifications.

3. Award of Small Value Items. In view of the administrative cost involved in issuing separate small purchase orders, the policies stated herein shall be observed in making awards under invitations which provide for the acceptance of individual items or groups of items.

See the terms and conditions of the invitation for bids on the reverse of SF-33, Invitation, Bid, and Award (Supply Contract). When numerous small orders would result from awards to each low bidder on an invitation and it is clear that (1) any of the prospective bidders would be in a position to furnish all of the items required, or related categories of items, and (2) the items are of such a character that suppliers would normally be interested in receiving only a substantial part of those quoted on, the following shall be observed:

a. Awards to low bidders will be determined and then reviewed to identify those awards which are of small dollar value in relation to the total number of items bid on by the low bidder, and which awards the low bidder would probably prefer not to receive.

b. Ascertain the additional cost of the items which would be involved by awarding the small portion to another bidder already in line to receive an award on substantial quantities of other items and who also submitted a bid on the same small portion. If the additional cost involved is less than \$10, the award should be made to the bidder already in line to receive a substantial award, provided that it is determined that the low bidder's interest in the award is negligible, considering the level of trade of such bidder. However, in any case where the low bidder desires the award, it shall be given him if he is eligible.

Whenever award is made to other than the lowest acceptable bidder in accordance with this policy, the purchase file shall reflect, for each item so awarded, the amount of the additional cost.

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4. Tie or Equal Bids

a. \*-Award By Drawing. \*- Tie bids which are low and acceptable will be decided by public drawing by lot of the names of the tie bidders (provided all other conditions are equal). This drawing may be witnessed by bidders or their representatives. When requested by a bidder, a time for the drawing will be set by the contracting officer and due notice thereof will be given to all interested parties.

b. Advantages of Particular Bid to Government. The contracting officer should always ascertain if one or more of the tie bids contain advantages not available to the Government if one of the other tie bids was accepted. Such advantages might include (1) a delivery time more suitable to the needs of the Government, (2) a design which adds to the utility of the equipment, (3) more suitable accessories offered or available for later purchase, or (4) superior quality of materials used. Whenever such conditions are determining factors in the awarding of tie bids, the exact reason should be made a part of the record, and the contracting officer should make certain his action is defensible should equally low bidders question the manner of determining the award (15 Comp. Gen. 712, 766; 16 Comp. Gen. 538; 17 Comp. Gen. 960).

c. Prorating Awards. In cases where tie bids are involved, it is not permissible to prorate the award in any way among the various tie bidders. The procedure of splitting the award among two or more bidders submitting identical bids has the effect of encouraging equal bids, since under such a procedure each bidder is assured of some of the Government's business instead of all or none. In cases where several bids in identical amounts are received and there is no choice as to quality among the several offerings of such bidders, nor any other determining factor, the correct procedure is to award the contract by drawing (13 Comp. Gen. 233; Comp. Gen. \*-Dec. \*-A-62698, Jan. 21, 1936, unpublished).

d. Discount Consideration. Tie bids involving different discount terms will be considered in the light of the terms offered and that bid offering the most advantageous discount period should be accepted. For example, a 2-percent, 30-day discount is more advantageous than a 2-percent, 20-day discount; a 2-percent, 20-day discount is more advantageous than a 2-percent, 10-day discount.

e. Preference to Small Business Concerns and to Contract Performance in Areas of \* \* \* Labor Surplus. It has been determined by the Administrator of General Services

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Administration that the making of awards, when the bids are received, in the manner set forth in item f will further the expressed congressional policy with respect to small business and give effect to the program directed toward the placement of contracts in areas of substantial labor surplus. For the purpose of this item the following definitions shall apply:

(1) Small-Business Concern. See FSH 6322.1, item 21, for definition of small business. This information is to be supplied by bidders in the space provided on SF-21 and SF-33.

(2) Equal Bids. Equal bids means two or more low bids which are equal in all respects, taking into consideration costs of transportation, cash discounts, and other factors properly to be considered.

(3) Areas of \* \* \* Labor Surplus. \*-The term "labor surplus area" means a geographical area which is a persistent labor surplus area or a substantial labor surplus area. These areas are classified by the Department of Labor as "areas of substantial and persistent unemployment" or "areas of substantial unemployment," and are (1) set forth in lists entitled "Areas of Substantial and Persistent Unemployment" or "Areas of Substantial Unemployment" issued by that Department in conjunction with its publication AREA LABOR MARKET TRENDS; or (2) certified as one or the other area by the Department of Labor pursuant to a request of a prospective contractor. The cited Department of Labor lists meet the requirements for designation as "areas of substantial labor surplus" for the purposes of Defense Manpower Policy No. 4, Revised, Executive Order 10582 implementing the "Buy American Act," and Small Business Administration programs. Within the Department, information regarding these areas is issued periodically by Plant and Operations Memorandum No. 23 and supplements thereto.

(4) Labor Surplus Area Concerns. The term "labor surplus area concern" includes persistent labor surplus area concerns and substantial labor surplus area concerns. A "persistent labor surplus area concern" means a concern which will perform, or cause to be performed, a substantial proportion of a-

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\*-contract in persistent labor surplus areas. A "substantial labor surplus area concern" means a concern which will perform, or cause to be performed a substantial proportion of a contract in substantial labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in such areas if the costs that the concern will incur on account of manufacturing or production performed in such areas (by itself or its first-tier subcontractor) amount to more than 50 percent of the contract price.

f. Award When Equal Bids Are Received. When equal bids are received, award shall be made in the following order of preference:

- (1) Persistent labor surplus area concerns that are also small business concerns;
- (2) Other persistent labor surplus area concerns;
- (3) Substantial labor surplus area concerns that are also small business concerns;
- (4) Other substantial labor surplus area concerns;
- (5) Small business concerns which do not qualify for any of the foregoing priorities but which will deliver the required end items to the Government from a plant, warehouse, or other establishment in a persistent labor surplus area at which the end items are either produced or available from stocks on hand;
- (6) Other concerns which do not qualify for any of the foregoing priorities but which will deliver the required end items to the Government from a plant, warehouse, or other establishment in a persistent labor surplus area at which the end items are either produced or available from stocks on hand;
- (7) Small business concerns which do not qualify for any of the foregoing priorities but which will deliver the required end items to the Government from a plant, warehouse, or other establishment in a substantial labor surplus area at which the end items are either produced or available from stocks on hand; -\*

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\*-(8) Other concerns which do not qualify for any of the foregoing priorities but which will deliver the required end items to the Government from a plant, warehouse, or other establishment in a substantial labor surplus area at which the end items are either produced or available from stocks on hand;

(9) Other small business concerns;

(10) Any other concern.

In the event the highest degree of preference involved applies to two or more equal bids, award shall be made by lot limited to such equal bidders. (See paragraph 4, Tie or Equal Bids, above.)

g. Performance Statement. In each award where preference is to be given under f above, the contracting officer shall, prior to award, obtain from such concern a written statement that it will perform, or cause to be performed, the contract in accordance with the circumstances justifying the priority.

h. Report on Preference Procurement in Labor Surplus Areas. Each agency which places contracts to be performed in surplus labor areas in order to aid persistent or substantial labor surplus areas and any awards made on a priority basis where equal low bids are received, shall report quarterly in quadruplicate within 30 calendar days after the close of each calendar quarter such procurements to the Office of Plant and Operations for transmittal to the General Services Administration.

Reports shall state the total dollar amount of procurement awards placed in labor surplus areas as a result of preference procedures. Amendments and modifications shall be included to reflect the total value of such actions. Agencies entering into indefinite quantity contracts to be performed in labor surplus areas as a result of preference procedures shall estimate the total dollar amount of orders which will be placed thereunder and include such data in the report. No standard report form is prescribed. However, the data reported shall be arranged as explained in exhibit 1 at the end of this code. -\*

5. Award When Only One Bid Received. The receipt of only one bid does not preclude award, provided:



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a. The specifications included in the invitation to bid were not restrictive.

b. The competition invited was adequate and sufficiently in advance of the time for opening bids.

c. The price is just and reasonable.

d. The bid is not at variance with the specifications and conditions as advertised.

6. Qualified Single Bid. When only one bid is received and that deviates from the advertised specifications and conditions, careful considerations must be given as to whether acceptance would be unfair to firms not responding, who, had they known such a deviation would have been permitted, may have made an offer even more favorable to the Government. When it is conclusively established that alteration of the specification to conform with the deviation has not jeopardized or infringed upon the rights of the other solicited bidders, award to the only bidder is proper.

7. Placement of Procurement Contracts in Labor Surplus Areas. In addition to the procedure outlined in FSH 6324. 1, item 4 with respect to tie bids, when awarding contracts not based on formal advertising, full consideration must be given to the objectives of Defense Manpower Policy No. 4, Revised, directing that all procurement agencies shall use their best efforts to award negotiated procurement contracts to contractors located within labor surplus areas to the extent that procurement objectives will permit, provided that in no case will price differentials be paid for the purpose of carrying out this policy.

8. Statement and Certificate of Award

\*-a. Discontinuance of Use--Notice to General Accounting Office. Supplement No. 14 to General Regulations No. 51 of February 11, 1952, provides that the preparation of SF-1036, Revised, may be discontinued when records are subject to on-site or comprehensive audit by the General Accounting Office, provided that all information usually shown thereon is otherwise available in the records of the agency. In such cases, the following procedure will apply. Retained purchase order or other contractual document should contain information indicating the basis on which the particular purchase order or contract is issued, that is, to lowest bidder, by negotiation or other pertinent information which can be used in selecting the supporting files of the agency to be examined during the course of an audit. -\*

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\*-b. Acceptance of Other Than Low Bid as to Price. When a bid other than the lowest bid as to price is accepted, the file shall be documented, in detail, as to the reasons for such acceptance.

Documentation shall include recommendations of the interested technical unit, if appropriate to the item(s) being purchased.

c. Acceptance of Low Bid Offering Equipment That Deviates From Advertised Specifications. Where the equipment offered by the accepted bidder deviates slightly from the advertised specifications, a statement shall be included in the bid file, showing the manner in which the equipment offered fails to meet the specifications and the reasons for considering the difference as being of minor importance. The statement shall show: (1) how the acceptance of a bid offering equipment deviating slightly from the specifications has not affected the rights of other bidders, (2) that the equipment offered is in competitive class with that offered by other bidders and with that specified, and (3) that the equipment will meet the needs of the service in every particular.

d. Bids Within \$2,500 Purchasing Authority. When the lowest acceptable bid received in response to an invitation to bid is within the \$2,500 purchasing authority, award of the contract should be made in the usual manner, unless, because of some unusual circumstance, it would be more advantageous to handle the purchase as a purchasing transaction under the \$2,500 purchasing authority. -\*

## 9. Bid Rejection

a. General. All bids may be rejected when the contracting officer determines that it is in the public interest to do so. See section 303(b) of the act (FSM 6301.24). When the contracting officer rejects all bids, he should notify each bidder, stating the reason for such action, or include a notice in the readvertisement, or on a sheet attached thereto, of the rejection of all bids received under the previous advertisement. Acceptance of one bid constitutes the rejection of all others. When bids have been rejected and it is later desired to rescind the action of rejection, the agreement of the bidder to whom award is contemplated must be obtained prior to an award. (For cancellation of invitations before opening, see FSH 6323.17.)

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b. Readvertisement. Readvertisement is equivalent to a rejection of all bids previously received. Rejection of all bids, either in total or for some items, and readvertisement may be necessary when, after the bid opening, the procurement office discovers that (1) the materials, etc., are available from some source or sources not represented by the bids, at a lower price, (2) the specifications were faulty and that as a result competition was adversely affected, or that specifications fail to describe the material required, (3) there is a change in Government plans or program, or (4) insufficient competition was obtained.

c. Negotiation After Advertising (FSH 6313. 14n)

d. Error Claimed by Bidder. There is no authority for rejecting all bids and calling for new ones merely because a bidder requests withdrawal of his bid on claim of error. These matters as a general rule are for determination by the General Counsel. Procedures for handling alleged claims of error are stated in FSH 6323. 21, item 14.

e. Retention of Rejected Bids. The originals of all rejected bids shall be retained in the file of the procurement office. The Comptroller General has ruled that, except in those cases where rejected bids are required by law to be filed with the General Accounting Office, all rejected bids may be retained in the procurement office, but must be kept available for inspection by duly authorized representatives of the GAO and for forwarding to the GAO upon its request (6 Comp. Gen. 311).

10. Erroneous Award to Higher Bidder

a. Procedure When No Work Has Been Started or No Deliveries Have Been Made. If, through error, award is made to other than the low bidder and work has not been started or delivery accomplished prior to time of discovery of the error, the contractor receiving the award should be advised of such error and requested to consent to cancellation of the award. In the event of his refusal to consent to cancellation, the case should be formally submitted, under the signature of the Secretary of Agriculture, to the Comptroller General, and the contractor advised to suspend action pending the Comptroller's decision.

b. Procedure When Work Has Been Started. If the contractor has proceeded with contract or delivery before the error has been discovered, the following procedure will govern:

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(1) Contract or Delivery Partly Completed. The contractor should be immediately instructed to cease operation and/or make no further deliveries. The matter should then be formally submitted to the Comptroller General for a decision as to action to be taken, and the contractor should be so advised.

(2) Contract or Delivery Completed. The matter should then be presented through regular agency fiscal channels to the General Accounting Office for determination of the amount due.

(Continued on next printed page)

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11. Availability of Funds and Low Bid Exceeding Estimated Costs

a. Availability of Funds. Prior to award of the contract or any subsequent change therein, the contracting officer should have written assurance that sufficient funds are available within the current allotment and are reserved for the proposed action. However, where required by unusual circumstances, a contract may be executed with a condition therein that the liability of the Government for payment of all or a portion of the contract amount is subject to availability of funds therefor. A contract provision somewhat as follows is suggested:

Funds are available in current appropriations and reserved for this contract in the amount of \$ \_\_\_\_\_. Completion of the contract is contingent upon appropriation of funds therefor. No legal liability on the part of the Government for the payment of more than \$ \_\_\_\_\_ shall arise unless and until such appropriation shall have been provided.

See FSM 6301.23 regarding statutory authority and requirements for such conditional contracts in connection with administration of National Forests (Comp. Gen. Dec. B-140850, Oct. 29, 1959).

b. Current Appropriation Act. It is the responsibility of all procurement officers to familiarize themselves with the stipulations of the current appropriation act with regard to use of the appropriation for particular purposes.

c. Low Bid Exceeding Estimated Costs. If the lowest bid received exceeds the estimated expenditure, award should not be made unless and until the purchasing officer is satisfied that no better price is obtainable and funds are available for the award at a price(s) exceeding the estimate.

12. Performance and Payment Bonds. See item 22, FSH 6323.21, on the handling of bonds.

13. Completeness of Contract Documents. If before acceptance a bid is amended in any manner whatsoever, as for example, clarification of bid, extension of option period, or reduction in price, etc., these amendments, on acceptance of the bid, become a part of the contract. Copies should be made and distributed together with the copies of the contract. The originals of these amendments are to be attached to the original



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bid and should be retained therewith. If the bidder retains any part of the bid invitation, exact copies of the parts retained should be placed with and made a part of the original and all copies of the contract. Catalogs, data sheets, or other descriptive matter submitted with a bid that is later accepted becomes a part of the contract and one complete set should remain with the original thereof.

14. Filing and Numbering of Contracts

a. Filing Contracts With General Accounting Office. Section 3743, Revised Statutes, as amended, provides that all contracts connected with the settlement of public accounts shall be deposited in the GAO. However, \*-the Comptroller General specifically exempted the Forest Service by letter B-48122, dated February 13, 1952, to the Secretary of Agriculture. See FSH 6542 for additional instructions on retention, filing, and handling of contracts.-\*

b. Numbering of Contracts. \*-Procedures for numbering of contracts are covered by FSH 6542.-\*

15. Distribution of Contract Documents

a. To Contractor. One signed copy of the accepted bid or contract complete with specifications, contract terms, etc., and "Acceptance of Proposal" (if letter of acceptance is written because of lengthy wording, etc., the original of this document is to accompany the vendor's copy of contract) together with a covering purchase order.

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b. Field Distribution. The accepted bid \* \* \* and such additional copies of the accepted bid and related papers forming a part of the contract as are required should be handled in accordance with field procedure. The requisitioner or person receiving the material should be furnished one copy of the contract (not to be confused with requisitioner's copy of the invitation to bid) for check on delivery and inspection of the material.

c. Purchasing-Office File. \*-One copy of the contract, and all rejected bids, should be retained in the procurement office. -\*

d. Additional Copies. Additional copies should be distributed as required according to field procedures.

16. Information Regarding Awards

a. Correspondence Regarding Awarded Contracts. All correspondence pertaining to awarded contracts should make specific reference to the contract by number (if one is assigned, otherwise by Invitation To Bid number), and a copy thereof should be placed with the procurement office contract file. Copies of correspondence pertaining to matters of particular interest to the accounts office, the requisitioner, the Washington office, etc., should be sent to such offices.

b. Advice to Interested Parties Concerning Awards. Correspondence will be received from bidders and others interested in the outcome of contract awards, which should be answered giving the desired information. This correspondence will be conducted mostly with out-of-town concerns, \*-since local firms are afforded the opportunity of viewing the public records for such information. Ordinarily, inquirers will be satisfied with the names of successful bidders and prices quoted. Copies of all such correspondence should be placed with the procurement office contract file. Administrative recommendations with respect to awards should be kept confidential. -\* If answering specific requests becomes a burden, the inquiring firm or individual may be notified that the records are on public display and may be viewed at the procurement office.

c. \*-Notification of Unsuccessful Bidder (FSH 6324. 1, item 9)-\*

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\*-17. Public Display of Awards. In order to alleviate clerical work in connection with the furnishing of advice to interested persons concerning awards, it is suggested that a public register be maintained at a convenient place. Such register should consist of a copy of the invitation for bids, and a copy of the abstract of all proposals, indicating the awards. -\*

18. Recommendation for Award by Higher Authority. Field bid cases submitted to higher authority for award should include the following papers and facts. In submitting cases to higher authority, papers should be filled out insofar as practicable and assembled in correct order. Since the number of copies required will depend upon place of award, the instructions should be closely followed.

Generally, authority will be sought from the Secretary's Office to permit award of contract by the regional or station procurement officer. This procedure, as outlined below, will expedite the award of contracts and will allow the contracting officer to properly administer contract work through direct delegation by him of a qualified representative for such on-site supervision as required.

a. At Time of Solicitation. When bids are solicited in the field and the estimate or appraisal of the total cost will exceed the regional or station authority, the following papers and facts will be submitted immediately to the Washington office for review:

- (1) One copy of the bid.
- (2) One set of drawings or plans which are included as part of the bid.
- (3) The estimate or appraised cost.
- (4) Information as to the number of bidders to whom bids were sent, public posting, and any commercial advertising made.

The above information will be reviewed in the Washington office and the region or station will be advised if any changes are deemed necessary. It will also be determined at this time whether the authority for the award will be made in the Washington office, and the region or station will be advised accordingly.

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b. Award To Be Made in Washington Office. If it is determined that the award will be made in the Washington office, the region or station will be requested to submit the following immediately after the opening of the bids. Airmail should be used if the option period does not allow sufficient time or if the need is urgent.

- (1) Originals of all bids received.
- (2) Two copies of the bid proposed for award.
- (3) Two copies of the bid bond (if required in bid).
- (4) Bid tabulation.
- (5) Statement as to proposed award and, if other than low bidder, justification advanced which should fully cover all the pertinent facts.
- (6) Statement that sufficient funds are currently available and are reserved for the proposed action  
\*-(FSH 6324.1, item 11).-\*

c. From Supervisor's Office to Regional Office. All bids received including original and as many copies of the bid or bids recommended for acceptance as needed in the region.

- (1) Bid tabulation in duplicate, including such information \* \* \* as reasons for rejection of low bid, etc.
- (2) List of prospective bidders to whom invitations were sent.
- (3) Statement that sufficient funds are currently available (FSH 6324.1, item 11). Covering memorandum with recommendation and any other pertinent information.
- (4) Submission of bid papers in proper order and with sufficient information for each bid case facilitates acceptance and leads to an earlier return of the accepted bid to the field unit. If it appears that the bidder's \*-acceptance period-\* does not allow sufficient time for mail transmission and acceptance, bidder should be requested to extend the \*-acceptance period-\* a reasonable length of time. The letter or telegram extending the time should accompany the bid papers, or be sent direct to the contracting officer.

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(5) Care should be taken to see that bidder is informed of award before expiration of the \* \* \* period for acceptance. In a formal contract case, bidder may be notified of award but should be informed not to proceed with the work until formal contract and necessary bonds have been approved.

19. Notification to Contractor of Award

a. General. In order to effect a complete acceptance of an offer, and thus create a binding contract, the bidder must be notified of the award and such notification must be given within the \*-acceptance period-\* specified by the bidder or any extension thereof. If the material is urgently needed and early notification of award is essential, the successful bidder may be notified by telegram \*-or letter-\* with advice that formal documents will follow. If notification is by telegram, a confirmation must be dispatched immediately to the contractor.

When the officer issuing invitations does not have authority to accept the bid, he may notify bidder that his proposal is being recommended for acceptance. The contract, however, cannot become effective prior to date of acceptance by the officer having authority to approve.

In no case should bidder be given definite promise that his bid will be accepted prior to its approval by the officer empowered to accept the bid. Nor should he be authorized to start manufacture or incur any other expenses, or be led to believe that he may proceed in any manner with the fulfillment of proposed contract except at his own risk. There is for consideration the possibility that the approving officer may be compelled through some technicality to reject all bids received and order readvertisement.

(1) Informal Contract Method. The acceptance of a bidder's proposal is accomplished when submitted on SF-33, Invitation, Bids, and Award (Supply Contract), by showing the accepted item or items (and also the price(s) if necessary for clarity) and the date of acceptance and signature of the contracting officer in the space provided at the bottom of the form. If the wording of the acceptance is too lengthy to be included in the space provided on SF-33, a letter of acceptance is prepared addressed to the contractor, dated as of the date of award and showing the items at the prices and under the terms accepted. This letter of acceptance should be prepared in the appropriate number of



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copies for agency distribution, the original being for the vendor. As it is necessary to provide a signed copy of the accepted proposal for the General Accounting Office file, the acceptance, whether indicated at the bottom of SF-33 or by letter of acceptance, shall be signed in duplicate by the contracting officer, unless no signed copy of SF-33 is to be sent to the contractor.

(2) Formal Contract Method. After bids are opened they should be tabulated and lowest competent bid determined. If guaranty bond is executed by an agent, satisfactory evidence of authority to sign must be attached. Should bond be questioned for any reason, the field office of the General Counsel should be requested to check it for legal sufficiency. If the bid surety is acceptable, a letter of acceptance should be prepared, notifying the bidder of the award. \* \* \* Bidder should be informed \* \* \* not to proceed with the work until officially advised to do so.

b. Date of Notification. Where liquidated damages are a part of the contract or where prompt delivery is essential \*-it is important to know the exact date the vendor receives the order. The-\* contract documents and/or purchase order should be dispatched without delay to the vendor by certified mail with return receipt requested. The receipt by the vendor of the acceptance of proposal, whether or not accompanied by the purchase order, will constitute evidence of formal notice of award.

c. Prompt Action To Secure Option. If the acceptance period of the successful bidder is about to expire and it is impossible to prepare the contract document in time to reach the contractor before the expiration date, the successful bidder should be notified of award by either wire or letter, whichever is more practical. Placing \*-a letter of notification or a confirmation copy of a telegram-\* in the mails prior to the expiration of the acceptance period constitutes acceptance of the proposal within the period. \* \* \*

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d. Mailing of Contracts and Notices. Instruments mailed to contractors for execution and notices to begin work thereunder should be by certified mail and the receipts retained so long as there is the possibility that the fact or date of their receipt may be contested.

e. Later Notice To Proceed. If it is necessary that the contractor have drawings, specifications, etc., or if a bond is to be furnished, the notice should advise that the additional necessary documents, etc., will follow and will constitute formal notice to proceed.

f. Acceptance Before Midnight of Last Day. Bids specifying a certain number of days for acceptance may be accepted any time before midnight of the last day (19 Comp. Gen. 139). \*-If the last day falls on Sunday, the requirement is complied with if acceptance is made on the following business day (20 Comp. Gen. 310). The same rule applies to legal holidays. -\*

g. Wage-Rate Determination. When the contract is subject to the Davis-Bacon Act, notice of award must be given within 90 days from the date of the original wage determination or new wage determination obtained and made a part of the contract before it is awarded (FSH 6322.24, item 1).

h. Instructions Regarding Labor Provisions. Upon award of the contract the successful bidder shall be furnished with a copy of the regulations of the Secretary of Labor pursuant to the Nonrebate of Wages-- "Kickback" law. If there is to be an agency representative on the site of the job, the contractor should be instructed to deliver to him the weekly affidavits and the weekly certified copies of payrolls, required by paragraphs 3.3 and 3.4 of the regulations, or otherwise appropriately instructed as to where they may be mailed \*- (FSH 6322.24b and FSH 6326.3). -\*

i. Instructions Regarding Nondiscrimination Provisions. Upon award of the contract, the contractor shall be furnished posters and directions for their use in accordance with item 6 of FSH 6322.1.

20. Unauthorized Award. An award made by a contracting officer for an amount which is in excess of his acceptance authority does not bind the Government. The Comptroller General has held that where an agent of the Government acts in excess

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of the authority vested in him, his act, from a legal standpoint, is no longer an act of the Government (15 Comp. Gen. 9, 20 Comp. Gen. 890, and 30 Comp. Gen. 23).

21. Debarment of Bidders. Debarment and ineligible lists should be checked to determine whether or not any of the firms or individuals submitting bid offers are included. If debarment action is in order, procedures outlined in item 28 under FSH 6326.1 should be followed.

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\*-Exhibit 1INSTRUCTIONS AND FORMAT FOR PREPARATION OF REPORT  
ON PREFERENCE PROCUREMENT IN LABOR SURPLUS AREAS  
(FSH 6324.1-4, item h)

Contracts Awarded During the Period \_\_\_\_\_, as the  
Result of Set-Aside, Tie-Bid, or Other Preference Procedure. 1/

(Col. 1) States (include Puerto Rico) containing labor surplus areas in which preference contracts awarded	(Col. 2) Labor surplus areas in which preference contracts awarded will be performed. Underline names of persistent labor surplus areas as shown below.	(Col. 3) Total dollar amount of such contract awards.
<u>States</u> <sup>2/</sup>	<u>Areas</u> <sup>2/</sup>	<u>Dollars</u>
Alabama	Birmingham <u>Gadsden</u> <u>Mobile</u>	5,000 6,000 7,000
Alaska	<u>Anchorage</u>	10,000
West Virginia	<u>Beckley</u> <u>Bluefield</u> <u>Morgantown</u> <u>Wheeling</u>	15,000 20,000 25,000 30,000
Sub-Total--Dollar amount of contracts awarded persistent labor surplus areas .....		106,000
		118,000

1/ To be reported quarterly. Indicate in report the reporting activity, location, etc.

2/ Arrange States and Areas within States alphabetically. -\*

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6324.2 - Award Requirements on Public-Works Contracts6324.21 - Preparation of SF-23, Construction Contract1. Contract Number (FSM 6324.1, item 14)

2. Contract Description. The description of the work to be performed under the spaces "Contract For" and "Place" should be identical with that shown in the invitation for bids.

\*-3. Date of Contract. Will be date that the bid is accepted or contract negotiations are completed. Date contractual documents are signed does not affect this date.

4.-\* Amount of Contract. There should be shown in this space the total amount computed on the basis of the estimated and actual quantities shown in the bid schedule and the unit prices bid.

\*-5.-\* Administrative Data. This space may be used for such purposes as billing instructions and designation of authorized representatives of the contracting officer.

\*-6.-\* Statement of Work. It is particularly important that the information in this space be carefully prepared. Every attachment which is to be a part of the contract must be specifically identified; that is, specifications should be listed by inclusive page numbers, the schedule of items should be appropriately titled and listed here-under, plans and drawings should be listed by title and sheet numbers, and any special conditions appropriately listed by title and inclusive page numbers.

Bid invitation elements exclusive of standard forms are somewhat as follows and should be so reported on SF-23, Construction Contract:

a. Standard Form 23A, General Provisions, pages  
1 to \_\_\_\_\_.

b. Special Conditions, pages 1 to \_\_\_\_\_.

c. Specifications, consisting of:

(1) General Requirements, pages 1 to \_\_\_\_\_.

(2) Construction Details and Supplemental Specifications, pages 1 to \_\_\_\_\_.

d. Plans or Drawings--Sheet Nos. \_\_\_\_\_.

\*-7.-\* Contract Time. Time for starting and completing work shall be stated in the special conditions of the invitation for bids. This will \* \* \* be stated in terms of the number of days from date of



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receipt of the notice to proceed. For instance, assuming the contract time to be 90 days, these spaces would be completed somewhat as follows:

a. Work shall be started within 10 days from date of receipt of notice to proceed.

b. Work shall be completed within 90 days from date of receipt of notice to proceed.

\*-c. Calendar dates should be used only under unusual circumstances. -\*

\*-8. -\* Alterations of Contract. In the spaces entitled "Alterations" there should be included any changes in the contract specifications which are made between the time of the bid opening and contract award. Such changes would be the same type as those authorized by clause 3 of SF-23A for changes subsequent to award of the contract.

6324.22 - Notice of Award (FSM 6324.1, item 19)

1. Award Notice to Contractor. The contractor should be formally notified \*-in writing. -\* There should be attached to the notice \* \* \* copies of the contract, with all pertinent papers. The notice should provide instructions regarding labor provisions of the contract; provision for schedule of work, etc., and any other \* \* \* advice, such as the name of the authorized representative of the contracting officer. The contractor should be requested to furnish performance and payment bonds and to return the contract properly signed.

2. Award Notice to Department of Commerce. Department of Commerce Form 16-19, Construction Contract Award Notifications, \*-available from Central Supply Service, -\* is a self-addressed postcard type of form \* \* \* used for reporting construction contract awards over \$25,000 financed from Federal funds \*-within the continental United States. -\*

A copy of form 16-19 mailed to the Department of Commerce shall be forwarded to the Washington Office \*-under file and routing designation 6320(5600).

If improvements such as residences, offices, warehouses, roads, are in more than one county submit a separate form for each county. In upper right-hand corner show "1 of 1," "2 of 3," etc., to relate reports applicable to one contract. In "Remarks" block furnish following information:

a. Type, number, and cost of each improvement included in the contract. -\*

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<u>*-Type</u>	<u>No.</u>	<u>Cost</u>
Example 1: Residences, 3 bedroom	2	\$ 15,000 12,000
Warehouse	1	35,000
Barracks	10-man	28,000
Example 2: Office	1	35,000
Water system	1	5,000
Sewer system	2	10,000

b. Whether site is Government owned or leased.

c. Whether or not architectural and engineering services were contracted and amount. -\*

6324.23 - Performance and Payment Bonds (FSM 6323.21, item 22)

6324.24 - Notice To Proceed. When the \*-signed-\* contract is returned by the contractor, it should be checked for appropriate signatures in accordance with the instructions on SF-23, Construction Contract. Upon approval of the contract and bonds by the contracting officer, the notice to proceed may be issued. The contracting officer should contact the contractor to agree upon a reasonable allowance of time for moving men and equipment onto the project. This should be accomplished if possible at the prework conference.

When the date to proceed is established, \*-the notice to proceed should be prepared confirming the date selected and directing the contractor to proceed with the work within the period of time stated in the contract. If mailed send any "notices to proceed" by certified mail-return receipt requested, in order to fix date of beginning of contract time. When directing contractor to proceed with the work, use form 6300-8, unless notice is given in other documents or correspondence.

The following should be furnished with or before notice to proceed:

1. Department of Labor Form SOL-155 Wage Rate Information Poster.
2. Currently required material on nondiscrimination compliance reporting.
3. AD-372, 29 CFR, parts 1, 3, and 5 concerning labor standards provisions. This is stocked in Central Supply Service. -\*

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6325 - CONTRACT FORMS6325.1 - Policy

1. Purpose. The expansion of FSH 6325 lists standard contract forms, and states policies and procedures governing their use, improvement, and reproduction.

2. Policy. All Federal departments, in the absence of special authorization, must use without deviation, except as provided herein, the contract forms that have been standardized by the General Services Administration. Procurement officers should familiarize themselves with all these forms and exercise care to ascertain that in each case the forms used are the latest issue or revision.

6325.2 - Improvement. Each department has been requested to discuss with its contractors the suitability of the standard contract forms, so that not only problems from the viewpoint of the Government but also problems from the viewpoint of those doing business with it may be brought to the attention of the General Services Administration. Inasmuch as it is mandatory that standard forms be utilized, it is to the interest of the Department to see that the most suitable forms are established. Suggestions on improvement of existing forms or recommendations for the creation of new forms will be welcome at any time and should be submitted to the Office of Plant and Operations for presentation to the GSA.

6325.3 - Additional Terms, Conditions, and Provisions. Additional terms, conditions, and provisions may be used as necessary except that the use of any that are inconsistent with those contained in standard contract forms must have the prior approval of the Department. Approved changes may not be made on the forms themselves, but should be shown in the "Special Conditions."

\*-6325.31 - Changes in SF-23A, General Provisions (Construction Contracts). During periods of national emergency, agencies may, with the prior approval of the Administrator of General Services Administration, amend paragraph d of clause 5, the Termination for Default Clause of SF-23A, by deleting the words "unforeseeable causes" in the two places where they appear in the first sentence, and substituting therefor the words "causes other than normal weather." Requests for such changes, with appropriate justification, should be submitted to the Director of Plant and Operations. -\*

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6325.4 - Prescribed Contract Forms

1. Leases. Standard Form 2, Real Estate Lease, is used for leases of real property where the Government is the lessee.

2. Construction Contracts

a. Standard Form 19, Invitation, Bid, and Award (Construction Alteration, or Repair), \*-shall be used for contracts estimated not to exceed \$2,000. SF-22 also may be used. -\*

b. Standard Form 19A, Labor Standards Provisions, and SF-19 \*-shall be used for contracts estimated to exceed \$2,000 but not to exceed \$10,000. SF-22 also may be used. -\*

c. Standard Form 20, Invitation for Bids (Construction Contract).

d. Standard Form 21, Bid Form (Construction Contract).

e. Standard Form 22, Instructions to Bidders (Construction Contracts).

f. Standard Form 23, Construction Contract. (Used for fixed-price contracts for the construction or repair of public buildings or public works.)

g. Standard Form 23A, General Provisions (Construction Contracts).

h. Standard Form 24, Bid Bond.

i. Standard Form 25, Performance Bond.

j. Standard Form 25A, Payment Bond.

k. Standard Form 27, Performance Bond (Corporate Co-Surety Form).

l. Standard Form 27A, Payment Bond (Corporate Co-Surety Form).

m. Standard Form 27B, Continuation Sheet (Corporate Co-Surety Bond).

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- n. Standard Form 28, Affidavit of Individual Surety.
  - o. Standard forms 25A, 27A, 27B, and 28 are for use whenever a payment bond under the Miller Act (40 U.S.C. 270A) is required.
  - p. Forms for determining contractor's responsibilities are:
    - (1) Report Form (Optional) Contractor's Financial Statement.
    - (2) Report Form (Optional) Experience Questionnaire.
    - (3) Report Form (Optional) Plan and Equipment Questionnaire.
3. Supply Contracts
- a. Standard Form 24, Bid Bond (if Performance Bond is required).
  - b. Standard forms 25, 27, 27B, and 28, as described in item 2, are for use when performance bonds are required.
  - c. Standard Form 32, General Provisions (Supply Contract).
  - d. Standard Form 33, Invitation, Bid, and Award (Supply Contract).
  - e. Standard Form 34, Annual Bid Bond. (The purpose of the Annual Bid Bond is to eliminate repeated posting of bonds for individual cases by companies enjoying frequent awards. It is usually departmentwide and no additional surety is required if annual bond is on file with the Office of Plant and Operations and is sufficient to cover the contract in question. If on file, SF-24 is not necessary.)
  - f. Standard Form 35, Annual Performance Bond. (The purpose of the Annual Performance Bond is the same as outlined for the Annual Bid Bond in item e. If on file, standard forms 25, 27, and 27B are not necessary.)
  - g. Standard Form 36, Continuation Sheet (Supply Contract).



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h. Standard forms 42 and 43. (These forms cover the purchase of coal only and are to be in addition to standard forms 32, 33, 36, and such bond forms as may be required. Paragraph 3 "Wage Scales" on SF-43 should be deleted.)

i. Standard forms 32, 33, and 36 will generally be used for the purposes listed below:

(1) Negotiated contracts.

(2) Negotiated or advertised contracts for non-personal services, utility services, solid and liquid fuels, and petroleum products.

(3) Contracts for indefinite quantities (term or open-end contracts) which permit orders to be issued against such contracts by ordering offices of more than one Federal agency.

j. Form AD-225, Contract for Services, \*-need not be executed when there is a continuing need for supplies or services and it is contemplated that the amount involved in any one case will not exceed \$2,500 within the fiscal year, regardless of the number of payments involved. If to protect the interests of the Government, form AD-225 will be used to define in writing the responsibilities and liabilities of the Government and the vendor in case of loss or damage to either Government or private property. Administrative judgment must therefore be exercised in each case to determine if a written agreement is necessary in the interest of the Government. -\*

### 6325.5 - Forms Used for Inviting Bids

1. Supplies and Services. Generally, advertising for bids for the furnishing of supplies and services shall be accomplished by the use of SF-33, Invitation, Bid, and Award (Supply Contract); SF-36, Continuation Sheet (Supply Contract), will be attached when the number of items requires its use.

2. Incorporation of General Provisions by Reference. To facilitate bidding by concerns regularly doing business with the Government, and to eliminate unnecessary distribution of SF-32, General Provisions (Supply Contract), the general provisions are incorporated by reference in the invitation for bids on SF-33. However, copies of SF-32 should be sent to all prospective bidders on agency mailing lists requesting that the

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form be retained for future reference. Copies should be made available promptly to bidders upon request. If desired, a single copy may accompany a bid invitation.

3. Construction Contracts. Standard Form 20, Invitation for Bids (Construction Contract), is to be used when inviting bids on construction, alteration and/or repair (including painting or decorating) of public buildings or works. Standard Form 19, Invitation, Bid, and Award (Construction, Alteration, or Repair), \*- shall be used for contracts estimated not to exceed \$2,000.-\* Standard Form 22, Instructions to Bidders (Construction Contracts), \*-also may be used.-\*

6325.6 - Reproduction of Forms. The use of precut stencils (also called die-cut or die-impressed) or reproducible masters for printing Standard Forms 19, Invitation, Bid, and Award (Construction, Alteration, or Repair); 20, Invitation for Bids (Construction Contract); 21, Bid Form (Construction Contract); 33, Invitation, Bid, and Award (Supply Contract); and 36, Continuation Sheet (Supply Contract), in order to eliminate excessive typing or overprinting in providing the necessary number of copies, is authorized subject to the regulations of the Joint Committee on Printing. In using these methods of reproduction, the spacing of the items on the forms may be varied and additional wording added to meet specific requirements. However, the sequence and wording of the items appearing on the forms are not to be altered. The "Terms and Conditions of the Invitation for Bids" which appear on the reverse of SF-33, for use with precut stencils or reproducible masters, are available from General Services Administration stocks. The "General Provisions" which appear on the reverse of SF-19 are printed on paper suitable for reproduction purposes, and stocked separately as "Reverse of Standard Form 19." In order to simplify the reproduction process, this form shall be used when printing SF-19 from die-cut stencils or reproducible master, thereby eliminating the need for reproducing these standard terms each time an invitation for bids is prepared. It may be ordered in the same manner as other standard forms.

6325.7 - Standard Contract-Administration Forms. The forms under this code will be used for all contracts for construction of public works when the contract amount is \$2,000 or more, \*-and for other work-project-type services where applicable,-\* and the use will logically serve the purpose for which they are designed. When the standard form will not adequately cover a situation, special letter should be written. Examples are (1) when it is desirable to include in the contract acceptance letter a definite date for the prework conference meeting, (2) when for some reason a contracting officer's representative cannot be designated, (3) when a definite date to proceed has been agreed upon by telephone or at the prework conference. With the exception of 6300-5, -7, and -8, there should be little need for form deviation.

## TITLE 6300 - PROCUREMENT MANAGEMENT

1. Form 6300-4, Request for Contract Action. To be used as the initial request to the contracting officer to begin action for completing a project by contract. It will be prepared by regional office or national forest personnel whenever contract action is required.
2. Form 6300-5, Notice of Acceptance. To be used when notifying a bidder that his offer is being accepted and that he is to complete contract and furnish bonds.
3. Form 6300-6, Designation of Contracting Officer's Representative (COR). To be used for the designation and authorization of a representative to administer a contract. Instructions are included.
4. Form 6300-7, Contract Acceptance. Letter to the contractor transmitting copies of completed contract, name of COR, and other information.
5. Form 6300-8, Notice To Proceed. Notice to the contractor to proceed with the work under contract. To be signed by the contracting officer. Receipt of this letter by the contractor establishes the beginning of contract time. (Use only when contract time is established by mail.)
6. Form 6300-9, Notice--Start of Contract Time. Notification to the COR of the date contract time begins.
7. Form 6300-10, Suspend Work Order. For use by the COR to give written notice to the contractor whenever work is suspended on the project by the COR.
8. Form 6300-11, Resume Work Order. For use by the COR to give written notice to the contractor whenever work is to be resumed on the project.
9. Form 6300-12, Work Order. For use of the COR to issue written instructions that require work to be performed within the general scope of the contract but do not increase or decrease contract time or unit prices.
10. Form 6300-13, Construction Change Order or Data Sheet Covering Amendments (R&T). For use in covering contract modification within the general scope of the contract. This form may also be used to record contract amendments but, since contract amendments are outside the general scope of the contract, a supplemental agreement signed by the contractor should be attached. (For roads, trails, or bridges only.)

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\*-11. Form 6300-14, Construction Change Order or Data Sheet Covering Amendments (Other Than R&T). Same as for 6300-13 except for other than roads, trails, and bridges.

12. Form 6300-15, Certificate of Final Inspection. To be used by the COR to notify the contracting officer that final inspection has been made and to recommend acceptance.

13. Form 6300-16, Release From Contract. To be executed by the contractor at the time of final payment.

14. Form 6300-17, Contractor's Anti-Kickback Statement. To be executed by the contractor and accompany each weekly payroll. (For use only when the contractor uses his own payroll. The certificate is a part of SOL-184 payroll.)

15. Form 6300-18, Building Inspection - Check List. To be used for any inspections made on building construction contracts.

16. Form 6300-19, Summary of Contract Action. This form to be currently maintained by the contracting officer to provide a complete record of all phases of contract administration. Forms for all contracts may be kept together in a ring binder or separately in each contract folder. When the contract is completed this form must be filed in the contract folder as a permanent part of the contract file.

17. Form 6300-20, Daily Diary of COR. This form to be completed currently by the COR for each day he is on the project. At the completion of the project, the diary will be forwarded to the contracting officer to be retained as a permanent record in the contract file. -\*

6326 - CONTRACT ADMINISTRATION

6326.1 - Requirements for Contract Administration. After bid has been awarded, the contract and bonds executed, and the contractor notified to proceed, the contracting officer should set promise cards and maintain such records as will insure performance in accordance with the terms of the contract.

The actual supervision of such contract work on the ground is usually by the contracting officer's designated representative. It is essential that the contracting officer protect the interest of the Government by checking with his designated representative on performance time and standards of work.

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For more detailed instructions on responsibilities and duties of the contracting officer, and his relationship to the regular Forest Service organization, see FSM 6320.

There follows a detailed explanation of each requirement for contract administration:

1. Contracting Officer's Designated Representative

a. Delegation of Authority and Responsibility. Contracting officers cannot redelegate the contracting authority delegated to them by the Secretary's office. They can designate a representative as provided by SF-23A, General Provisions (Construction Contract), and SF-32, General Provisions (Supply Contract), to deal with the contractor at site of work for administration of the contract. The contracting officer's representative will be responsible to the contracting officer for the administration of the contract within the authorities and limitations prescribed in the letter of designation issued by the contracting officer. In all cases, the letter of designation will reserve for the contracting officer the right to render decisions on questions of fact in dispute as well as to make amendments and modifications involving adjustments in contract price or contract time. A copy of the letter of designation will be furnished to the contractor.

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The most important function of the contracting officer's designated representative is the supervising, inspecting, accepting of the contracted work as it progresses, and the making of recommendations for final acceptance of the completed project. This involves a dual responsibility for seeing that (1) technical specifications and plans are fully complied with and (2) the work performed by the contractor is carried out in accordance with the terms and conditions of the contract. For the most part, the contracting officer must rely upon the judgment of the designated representative in inspecting and accepting workmanship, materials, etc., during progress of the work, approving partial payments, and making other decisions or recommendations incident to the day-to-day administration of a contracted project. Consequently, in carrying out these responsibilities on a major project, the designated representative ordinarily will be available for on-site supervision on a full-time basis. He may have inspectors of lesser grade working under his direction, particularly when serving as the designated representative for more than one major project in the same area and each such project requires an inspector full time.

There may be instances where, because of the small size, intermittent or simple nature of the contracted project or projects on a unit, the services of a qualified employee are required only on a part-time basis. In such cases, the designated representative may be a forest staff officer or a district ranger who, in turn, may assign inspectors to the projects as needed.

The primary functions of an inspector are to (1) check the contractor's performance for compliance with the technical specifications, plans and work schedule, and with labor-standards provisions of the contract, (2) notify the contractor of any deviations therefrom, (3) report to the contracting officer's designated representative any refusal or failure by the contractor to comply with such contract provisions, and (4) keep progress reports and official diary of all actions, happenings, and other developments which may be useful at a later date in the event of a dispute or investigation. All dealings with the contractor regarding noncompliance with the terms and conditions of the contract, including technical specifications, \*-issuance of stop and start orders, -\* and any changes, are the specific responsibilities of the contracting officer's designated representative or the contracting officer.

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\*-The inspector will be responsible to the contracting officer's representative for performing the above duties. These duties will be set forth in the letter of designation issued by the contracting officer's representative. A copy of the letter of designation will be furnished to the contractor and the contracting officer.-\*

b. Major Duties of Contracting Officer's Designated Representative in Contract Administration. These major duties are to:

(1) Thoroughly familiarize himself with the terms and conditions of the contract and his authority in administering such terms and conditions.

(2) Issue "start" and "stop" work orders. "Stop" orders should contain specific information regarding cause of suspension and effect on the work. For example, the statement "inclement weather" is not sufficient. The nature of the inclement weather must be indicated and why and how it caused the work suspension.

(3) In connection with compliance with plans and specifications, decide only questions of fact arising in regard to: quality and acceptability of materials furnished and work performed; acceptability of equipment to be used; manner of performance and rate of progress of the work; interpretation of plans and specifications; acceptable fulfillment of the technical phases of the contract on the part of the contractor; and disputes and mutual rights between contractors working on projects in the same area. Avoid arbitrary and capricious action and consider all facts before arriving at decisions on the foregoing matters, and if agreement cannot be reached, refer the matter to the contracting officer.

(4) Make changes in specifications and plan to the extent authorized by the letter of designation. Issue written orders to the contractor ordering such changes.

(5) Submit recommendations in advance to the contracting officer on changes requiring contract amendments and modifications involving adjustments in the contract price or time, final acceptance of the completed project, and disputes concerning questions of fact.

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(6) Whenever subsurface, latent, or unknown physical conditions are encountered, as outlined in SF-23A, immediately instruct the contractor to contact the contracting officer, and at the same time inform the contracting officer as to the conditions, together with recommendations.

(7) Reject any defective materials furnished by the contractor and suspend any work not properly performed, subject to the final decision of the contracting officer, provided suspension is ordered in writing.

(8) Report to the contracting officer any violations of the terms and conditions of the contract, unsatisfactory developments, etc., as they occur.

(9) Make spot checks of weekly payrolls and periodic checks on the assignments and classifications of the contractor's employees to ascertain if all wages and labor requirements of the contract are met by the contractor.

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(10) On request by the forest supervisor or his representative, arrange for performance by the contractor of brush disposal, and fire protection and sanitation measures, and use of contractor's forces on forest fire fighting in accordance with contract provisions.

(11) Maintain the official diary on the entire project operation covering type of activities, number of work shifts, units of major equipment operating, progress of work in relation to program schedules, physical difficulties encountered, weather conditions, and other matters considered of importance in the prosecution of the job.

(12) Keep a progressive record of progress payments.

(13) Maintain a contract file of all documents, including the project diary, written orders, and other records prepared incident to administration of the contract, for review by the contracting officer at the time of final acceptance of the completed job. Prepare all orders and correspondence affecting contract administration, in writing, with copies forwarded to the contracting officer. All such orders and correspondence will be signed over the title "Contracting Officer's Designated Representative."

(14) Organize and supervise the work of inspectors and aids assigned to the job.

(15) Maintain good relations with the contractor or his representative to insure orderly prosecution of the work within the program schedule.

(16) Upon request of the contracting officer, conduct special investigations and prepare statement of finding on disputes, defaults or other matters which may arise involving technical aspects of the contract.

c. Qualifications and Selection. Depending on the type of work being contracted, the contracting officer will request the program personnel concerned to provide a qualified individual to act as the contracting officer's designated representative. For example, the designated representative for a road construction project will be an individual provided by the regional engineer and designated by the contracting officer. Similarly, the forest supervisor will provide a qualified individual to act as the contracting officer's designated representative for a contract covering a forest work project, such as ribes eradication, fence construction, etc., awarded by the regional office, and resulting from forest issued invitations to bid, as well as for contracts awarded by the forest.

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d. Notice to Contractor. The contracting officer will issue a written notice to the contractor at the time the contract is entered into, or as soon as possible thereafter, regarding the name of the designated representative and describing the instances in which he will serve as the authorized representative.

e. Responsibility to Contracting Officer. The contracting officer is legally responsible for the action of the designated representative. Under the circumstances, a direct line of communication will be provided between the designated representatives and the contracting officer so that questions involving contract administration may be handled without delay or misunderstanding. Communications should be routed through normal line-organization channels whenever time permits. All such written communications will be addressed directly to the designated representative and signed by the contracting officer over the title "Contracting Officer."

The contracting officer's designated representative should furnish to the contracting officer copies of all correspondence with the contractor, cognizant regional resource division, and forest supervisor relating to contract compliance and contract changes. Use double designations as needed.

f. Responsibility to the Regular Organization. The contracting officer's designated representative will obtain advice and assistance on problems relating to technical phases of the work from the cognizant technical personnel. For example, on a road-construction project the designated representative will contact his immediate superior for instructions for solving engineering problems encountered during the prosecution of the work. Furthermore, his immediate superior may direct the designated representative to make needed changes in technical specifications and plans; and, unless the matters involved require the decision of the contracting officer, the designated representative will issue orders to the contractor to make such changes.

2. Release From Contract After Award. Contracting officers have no legal or administrative authority to release a contractor from his contractual obligation to the Government, except as such action is specifically authorized by the contract provisions.

If award is made within the option period designated by the bidder, and purchasing office is in receipt of a request from the bidder for release from his bid, the contractor should be notified that he must comply with the terms of the contract, on the completion of which he should submit properly executed invoices in accordance with the terms of the contract. (If the contractor submits an invoice for an amount in excess of the contract price, the matter should be referred



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to the General Accounting Office through the regular agency fiscal channels.)

In the case of bids submitted under guaranty the bidder, if he attempts a withdrawal or an evasion after award, is held by the bond of agreement to execute the contract. Where no guaranty is required with the bid, bidder cannot be forced to execute a contract, the recourse being a purchase against his account and collection of excess cost. Should bidder fail or refuse to pay the excess cost, making it necessary to collect by court action, recourse is the expedient of refusing to do business with a man who declines to stand behind his bid for a "reasonable" length of time and rejecting of his bids because of his previous defaults. Should instances of this kind arise in connection with field purchase, all the facts should be reported to the GAO for appropriate action, through the usual channels.

### 3. Contract Review With Contractor

a. General. The contracting officer will arrange meetings with the contractor and the contracting officer's representative to review contract revisions and specifications and establish such followup procedures as may be required to determine that performance is proceeding or completed in accordance with the terms of the contract. The contract file should be documented to show the extent and nature of followup action so that in the event of non-performance of any kind, the record will indicate that the contractor had adequate notice of any delinquencies. Where damages may be assessed due to nonperformance of any kind, it is particularly desirable that the contractor be placed on notice of this possibility in time to take action to avoid such assessment.

### b. Conference With Contractor Prior to Start of Work

(1) Review. The contracting officer should arrange a meeting prior to commencement of project work to be attended by the contracting officer and/or his representative, the contractor, and other interested parties to review the general provisions and technical specifications in the contract, contractor's schedule of work, limitation of authority of the contracting officer's representative, relationship of the program and other Forest Service personnel to the contractor, and other administrative phases of the contract.

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Following the meeting, the contracting officer should prepare a letter to the contractor confirming the fact that a conference was held, the date thereof, the names of those in attendance, and outlining in detail the subject matter covered. Any problems or conditions presented not clearly covered by the contract should be fully outlined, together with any remedies agreed upon for their solution or indicating that further consideration will be required. Copy of the letter should be furnished to the contracting officer's designated representative, the cognizant division, and the forest supervisor

(2) Work Schedule. The contractor should be requested to furnish a schedule of work whenever in the opinion of the contracting officer such a schedule is desirable. The schedule should be broken down as to the various phases of the job showing the estimated time and dates for completion of each phase and estimated date of final completion. This schedule is particularly desirable when the contract specifies completion or delivery date by a certain specified time or when liquidated damages are applicable to the contract. The contracting officer should review the proposed schedule in consultation with such qualified technicians as may be necessary and approve the schedule or request the contractor to make such adjustment as may be necessary to ensure that the work will be completed within the allowable contract time. The schedule should be submitted within 20 days after notice to proceed and in any event prior to contract work.

4. Contract Modifications, Changes, and Amendments.

\*- "Contract modification" means any written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity, or other contract provision of an existing contract, whether accomplished by unilateral action in accordance with a contract provision or by mutual action of the parties to the contract. It includes (1) bilateral actions, such as supplemental agreements and amendments, and (2) unilateral actions, such as change orders, notices of termination, and notices of the exercise of an option. In either case the proposed action must be to the Government's interest. Legal assistance should be obtained as necessary to ensure the sufficiency of the form of the modification. - \*

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a. Authority To Change. The statutory authority of an officer to bind the United States by a contract is exhausted when the contract is signed; and that officer has no authority thereafter, in the absence of a provision in the contract, to decrease the rights acquired by the United States (24 Comp. Dec. 700). Standard Forms 32, General Provisions (Supply Contract), and 23A, General Provisions (Construction Contracts), stipulate conditions of changes in those types of contracts. The best interest of the Government is first consideration in questions involving a contract change.

When considering the propriety of proposed changes in contracts, the following principle will govern:

An existing contract for the performance of work for the Government may not be expanded so as to include additional work of any considerable magnitude without compliance with section 3709, Revised Statutes, requiring advertising and acceptance of lowest bid, unless it clearly appears that the additional work was not in contemplation at the time of the original contracting and is such an inseparable part of the work originally contracted for as to render it reasonably impossible of performance by other than the original contractor. (5 Comp. Gen. 508. See also 15 Comp. Gen. 573 and 17 Comp. Gen. 427.)

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Formal contracts usually provide for changes or modifications within the general scope of the contract.

b. Modifications and Amendments

(1) Modifications are changes within the general scope of the contract and are principally as follows:

Changes for Which Provision has Been Made in the Contract and Authorization Granted Thereby and for Which No Written Agreement or Order Is Necessary. These changes are such as contemplated by the language of the contract, and include variations within any leeway percentage or contingent stipulations in the original contract and minor changes that do not increase or decrease the cost of its performance. Samples of possible types involved under this class are as follows:

Minor adjustments of type of work necessary to balance quantities of work or minor alterations in plans that would not ordinarily be apparent to the contractor when inspecting the site of the work before submitting his bid.

Minor adjustments in size or design of individual structures, provided such adjustments do not increase or decrease the over-all cost of the total project, or time for performance of the contract.

Normal overruns or underruns resulting from the fact that actual conditions encountered in the work vary slightly from those anticipated in the original design, whether or not such variations are involved in adjustment of the plan. Such overruns and underruns, however, shall not exceed any leeway percentage provided in the original contract.

It is anticipated from the examples outlined above that the changes are of such minor character, involving no change in contract price or time, that written agreement is unnecessary.

Changes for Which Provision Has Been Made in the Contract but Which Will Require Written Agreement or Change Order. These changes are within the general scope of the contract but frequently involve an increase or decrease in cost of performance for which written agreements between the contractor and contracting officer are necessary. Such changes, for example, might involve the following:

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Any revision of specifications.

Any revision of plans which require different materials or altered methods of construction. (If the change is so entirely foreign as to fall outside the general scope of the contract, a contract amendment would be necessary, with consideration being given that action was not in conflict with section 3709, Revised Statutes.)

Proposed changes, together with previously authorized adjustments and changes, that will result in a sum total change in excess of the leeway percentage from the total original contract cost.

Overruns or underruns in any item which will result in a sum total change in excess of the leeway percentage from the original contract cost, unless, as in some instances, minor items are excluded or are not mentioned in the contract provisions.

Where an extension or shortening of the project within the leeway percentage is proposed.

Adjustment in performance time clauses.

All agreements, whether accomplished by change orders or other form, that incorporate a change in contract price or time will be signed by the contractor and contracting officer, and should be consecutively numbered. No work should be performed until the agreement has been completed.

Agreement in Advance of Change Order. Ordinarily an agreement may be reached in advance of issuing a change order as to an equitable adjustment concerning any contract modification. Where agreement cannot be reached in advance, the contractor should be requested to proceed with the work as directed by the contracting officer and to maintain such records of costs as may be necessary to establish an equitable adjustment. If the contract contains provisions for pursuing work where the price cannot be agreed upon or it is not possible to determine in advance, then the procedure so outlined would be followed. Disputes or disagreements as to amount to be paid which cannot be resolved will be handled as outlined in SF-23A, General Provisions.



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(2) Amendments are used only for work outside the general scope of the contract and are principally as follows: (1) extension of a project length outside the original termini is outside the general scope of the contract; (2) work not in contemplation at the time original contract was prepared.

\*-An amendment may be entered into when additional work is required which was not within the scope of the contract and is such as to render it reasonably impractical of performance by other than the contractor. As the contractor is not bound by the existing contract to perform the additional work, his written consent to the amendment must be obtained. When an amendment is entered into sufficient justification must be recorded in the contract file to show that the amendment was to the advantage of the Government and to clearly establish that the action was in accordance with the advertising requirements of the Federal Property and Administrative Services Act of 1949, as amended. -\* If this cannot be established, then a separate contract for the work should be entered into either by bid procedure if time permits, or under an exigency statement. No work should be performed prior to the completion of the contract amendment by the contractor and contracting officer. No work should be performed under a separate contract through bid procedure or exigency statement until authorized by the contracting officer.

c. Procedure for Effecting Changes or Modifications. Change orders are changes contemplated by the language of the contract and are to be issued in the manner provided in the contract. Whenever modifications are contemplated, the contractor should be notified, in writing, of the changes proposed and be requested to submit fairly detailed cost estimates showing the effect of the change on the total value of the contract and the increase or decrease, if any, in completion time. Those estimates should be considered carefully as to reasonableness of cost and whatever other factors are pertinent. All documents which amend or otherwise change contracts should be processed in the same manner and by the same officers as were the original contracts; the same number of copies should be signed and the distribution of the original and all copies should be the same (14 Comp. Gen. 141 and 473; 18 Comp. Gen. 232).

The contracting officer's designated representative shall furnish the pertinent facts which should be included in the modifications, amendments, or separate contracts, such as:

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(1) A description of the work, and statement of the reasons why it is necessary and why it was not included, or could not have been anticipated in the original contract.

(2) Maps, plans, and sketches showing changes on the same scale as the original tracings in the regional office, and construction details including method of measurement and basis for payment.

(3) A detailed statement of the cost of the work and increase or decrease, if any, in completion time. If the work is to be performed on an agreed unit-price basis, the estimate shall also show the calculation of the new unit price for each item.

(4) If the work is to be performed on a force account basis, a tabulation of hourly rates and other required data for force account work.

d. Work Orders. Orders may be signed by the contracting officer's designated representative and should be designated by alphabetic letters as distinguished from the numbered orders issued by the contracting officer.

In a number of places the specifications may contain the phrase "as directed by the engineer," or similar wording, which covers the usual verbal directions given to the contractor or his foreman by the designated representative in the course of supervising construction operations. Should such directions be ignored, or should the contractor take exception to them, the designated representative shall then issue a formal order, quoting the specifications by section. Following are a few typical cases ordered by the designated representative which are used on road construction:

- (1) Restoration of surfaces opened by permit.
- (2) Widening roadway for quarry purposes.
- (3) Deviation from approved bridge shop plans.
- (4) Use of more than one brand of cement.
- (5) Performance of work neglected by the contractor, but for which payment is made indirectly under other items.
- (6) Approval of location of contractor's camps.
- (7) Approval of locations of temporary roads, quarries, storage buildings, and operations.
- (8) Permission to hand-mix cement.

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Other similar situations, as needs arise on the project, that do not change the contract cost or time for performance.

In all cases the contractor shall be required to sign the designated representative's copy in order to establish the fact of receipt of the communication just as required in the case of the contracting officer's orders.

Responsibilities of the contracting officer are continuing after award of contract, and attention must be given to proper handling of labor reports and final acceptance of the approved project.

e. Effect on Bonds. Ordinarily if a bond was required in the original contract and an amendment increasing the contract is made, the bond should be extended to cover the work under the amendment. In other cases the amendment may be of such a nature that no bond need be required, as when the total contract price is being decreased. If a bond was required in the original contract and a subsequent increase in price is involved in either a change order or an amendment, an increase in the penal amount of the bond may be required if determined necessary by the contracting officer. The standard performance bond expressly waives notice to the surety in connection with contract modifications. Where the standard performance bond is used, or a similar provision with respect to waiver of notice appears in the bond used, it is not necessary to notify the surety of the issuance of a change order. The consent of the surety must be obtained where (1) a change order is contemplated and the standard performance bond or a provision waiving notice of contract modification is not used, or (2) the penal sum of the bond is to be increased, or (3) an amendment to the contract is contemplated. When the consent of the surety is required, it should be obtained in writing in substantially the form shown below and completed in the same manner as the basic bond as to signatures, seals, and attests:

(1) Consent of Surety to Modification or Amendment Providing for Increase in Penal Sums of Bonds Previously Given

Consent of surety is hereby given to the foregoing contract modification or amendment, and the surety agrees that its bond or bonds shall apply and extend to the contract as modified or amended thereby. The principal and surety further agree that on and after the execution of this consent, the penal sum of the aforementioned performance

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bond or bonds is hereby increased by \_\_\_\_\_  
dollars, and the penal sum of the aforementioned  
payment bond or bonds is hereby increased by  
\_\_\_\_\_ dollars.

(2) Consent of Surety Without Providing for  
Increase in Penal Sums of Bonds Previously Given

Consent of surety is hereby given to the fore-  
going contract amendment, and the surety  
agrees that its bond or bonds shall apply and  
extend to the contracts as amended thereby.

5. Documentation of Contract Administration

\*-a. Daily Diary Record. The contracting officer's representative will maintain a record for every day he is on the contract project. It should include pertinent information such as units of equipment working, number of contractor's men on the job, difficulties encountered, weather conditions, delays and reasons therefor, substandard work found, status of the work, and materials being delivered.

It will be maintained on Form 6300-20, Daily Diary of COR. When the project has been completed it will be sent to the contracting officer to be retained as a permanent part of the contract file. -\*

b. Work Progress Reports and Invoices

(1) Work Progress Reports. The contracting officer's designated representative is responsible for the preparation of progress reports. Unless a shorter reporting period is determined by the contracting officer, a progress report shall be made as of the last day of each month during the construction period. A copy will be furnished the contracting officer, the responsible division, other units, or individuals as administratively desirable, and the file of the contracting officer's designated representative. The original may be used as an invoice ((2) below). The report may be designed to fit the requirements of the job. Ordinarily the report will show as a minimum the quantity of work completed up to the beginning of the current reporting period and estimated cost, quantity completed during current period and estimated cost, total quantity to date with estimated cost and percent of total project this represents, and date scheduled for completion of the project.

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(2) Invoices. The time for submission by the contractor and the unit of payment will be in accordance with the procedure for payment as outlined in the contract. If the work progress report is in appropriate detail and in conformance with the contract, it may be used by the contractor as his invoice or in preparation of SF-1034, Public Voucher for Purchases and Services Other Than Personal.

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6. Extension of Delivery or Contract Time. Delivery or contract time, where it is a definite consideration in settlement, is computed from the date contractor receives purchase order, or notice to proceed under the contract, which date should be definitely established by registry receipt or otherwise.

The time stated in a formal contract for completion of the work may not be extended except by the contracting officer and then only in the case of (1) a change order, contract modification, or amendment involving additional work and the extra time is necessary to the additional work, or (2) a finding of fact in which delays have been found to have been excusable under the terms of the contract.

Under the provisions of SF-32 or SF-23A, which are incorporated in bid invitations, a contracting officer may extend the delivery period only as provided therein or as stipulated in the contract terms.

Extensions should be in writing. The written notice of extension should recite the reasons therefor and signed copies should be filed with all copies of the contract. Damages for delay are not chargeable within the period of formal extension.

A contract which specified a completion date without specific stipulation relative to extension may be extended by the contracting officer if administratively determined that it is in the interest of the Government to do so.

7. Completion of Contract--Final Payment Procedures Applicable to Contracts Other Than Supplies and Equipment. After all work has been completed under a given contract and final inspections made, action can be taken to effect final payment. This action should consist of the following:

a. Contracting officer will notify contractor that work has been satisfactorily completed.

b. If surety bonds (payment and performance) are being used, notify bonding company that work has been completed. (Note: Do not use the word "release" in any correspondence with the contractor or bonding company.)

c. Secure release from contractor to avoid future charges or claims. (This can be attached to and made a part of contractor's final invoice certification or it can be handled as a separate document. In any event, it should accompany final payment with copies for all contract files. If signed as separate document, signature should be in same manner as reflected on original contract.) Sample release follows:

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Release From Contract

For and in consideration of the receipt of final payment in the amount of \$ \_\_\_\_\_ from the United States of America Forest Service under and pursuant to the following contract:

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The undersigned do/does hereby release the United States of America from any and all obligations whatsoever arising under said contract.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_.

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8. Suspension of Work. When it is necessary from the Government's standpoint, and not as an accommodation to the contractor, to suspend work or deliveries under a contract containing provision for liquidated damages or other time charges for delays, the contracting officer may order the suspension by written notice to the contractor, giving effective date, reasons therefor, and the approximate duration. Construction contracts will usually contain specific provisions for suspension of work. Written order to resume work or delivery should be issued a reasonable time in advance of effective date. The time during which work is thus suspended will not be charged to contract time and will be excluded from liquidated-damage charges. A signed copy of the orders must be filed with each copy of the contract. When a formal contract is involved, and possibility of need for suspension is foreseen at the time of its preparation, the concluding sentence of clause 1 thereof should stipulate that the contract period of time is exclusive of any time that may intervene between the effective date of orders of the Government to suspend operations and the effective date of orders to resume work. This is not regarded as an extension of time. Suspensions must not be ordered for the benefit of the contractor (8 Comp. Gen. 80).

9. Additional Quantities After Contract Completion. When the quantities specified in a contract have been delivered, the contract shall be considered complete and no additional quantities shall be ordered under the contract. However, a quantity variation caused by

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conditions of loading, shipping or packing, or allowances in manufacturing processes may be accepted if provided for in the contract.

10. Sale of Business by Contractor. A legitimate sale of business by a contractor is not an assignment of contract or claim with the Government. Any uncompleted contract assumed by the purchaser is effective upon his compliance with conditions herein. Purchaser should furnish waiver from the original contractor before payment is made. In 9 Comp Gen. 72 the Comptroller General held that:

"Where either an individual or corporation having an uncompleted contract with the Government or a valid claim against it, sells his or its entire business, or where a public-service corporation sells or transfers all of that portion of its business relating to the particular kind of service for which it has a contract with the Government, and the transferee assumes the obligation of the contract and furnishes a new performance bond, such a transfer is not required to be considered an assignment of the contract or claim prohibited by sections 3737 or 3477 of the Revised Statutes, and payment is authorized to the transferee upon compliance with the contract terms and furnishing a waiver from the original contractor."

11. Assignment of Claims--Authority. Public Law No. 811, 76th Congress, approved October 9, 1940 (31 U.S.C. 203), and known as the Assignment of Claims Act of 1940, amends sections 3477 and 3737 of the Revised Statutes to permit assignment of claims under public contracts providing for payments aggregating \$1,000 or more. (FSM 6540, Sample Assignment of Claims.)

12. Inspection of Materials. It is the responsibility of contracting officers to insure that supplies and services are in accordance with contract specifications by arranging appropriate inspection and acceptance before payment. In accordance with SF-32, any supplies or services found not in conformance with specifications must be reported in writing immediately to the contractor. The contractor must be allowed to replace or correct rejected supplies within the contract time. However, if program needs permit, a longer period of time may be allowed the contractor, if the rights of the Government to collect damages for delay delivery are reserved. Failure of the contractor to perform satisfactorily after the above action is cause for termination of the contract or other corrective action as appropriate. In cases where there is an urgent need for the supplies and it is not feasible to wait for replacement, if the material furnished can be logically used, contracting officers may accept the substandard material at an equitable adjustment in price.

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13. Substitution of Materials

a. Policy. Rarely will substitution of materials be permitted, unless authorized by the terms of the contract and the contractor executes a certificate to the effect that the substituted items are guaranteed to be equal in quality and in all other respects to the standard specified.

b. Contract Modification. If it is found impossible to obtain delivery of what was specified, from the contractor or elsewhere, and it is known that certain substitutions must be made, consideration may be given to modifying the contract in accordance with modifications in this section; however, such action should be pursued with the greatest of caution in order to protect the rights of the Government and those of competing bidders. See item 4 under FSH 6326.1.

14. Followup on Performance

a. Periodic On-Site Reviews. The contracting officer should schedule, as provided below, periodic on-site reviews of each contract awarded by him to determine that all provisions of the contract are being complied with. As a general policy, a review will be made of each construction contract and service contract involving performance of project work such as tree planting, aerial photography, white pine blister rust control, etc.

(1) Shortly after start of work, preferably about the first month of operation.

(2) During the height of work progress on contracted jobs extending through most or all of the work season.

(3) In case of a troublesome case, such as upon receipt from the contractor of a written notice of (a) subsurface or latent physical conditions at the site differing materially from those indicated in the contract and (b) unknown physical conditions at the site of an unusual nature differing materially from those ordinarily encountered and generally recognized as being inherent in work of the character provided for in the contract.

(4) In case of dispute or appeal.

(5) Upon completion of the contracted work for final acceptance before final payment is made.

Ordinarily these reviews will be made by the contracting officer in company with the designated representative and the

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contractor. In the case of Washington office awarded contracts, the regional supply officer will make such reviews for the contracting officer. When the regional supply officer is the contracting officer, he may designate his staffman as his duly authorized alternate to make periodic on-site reviews and final inspection and acceptance in company with the designated representative. In the case of contracts awarded by forests or other field units under delegated contracting authority, the reviews will be made by the contracting or other qualified forest officer, other than the designated representative.

The following criteria will be considered by the contracting officer in determining the number and frequencies of on-site reviews to be made of a contracted job:

- (1) Previous relationship with the contractor.
- (2) Type of contract.
- (3) New field of contracting.
- (4) Experience and competence of the contracting officer's designated representative.
- (5) Need for the contracting officer or his staffman to become familiar with the type of work being performed, including terminology applicable to such work.

Some of the important matters to be covered during the on-site review should include:

- (1) Performance of the contracting officer's designated representative.
- (2) Compliance with the labor provisions and nondiscrimination in employment clause.
- (3) Procedure used in handling changes and modifications.
- (4) Project log or diary, and documents in the contract file of the designated representative.
- (5) Progress of the work with respect to contract time, and possibility of overage in time and assessment of liquidated damages.
- (6) Relationships between the contractor and the contracting officer's designated representative.



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b. Responsibility in Connection With Contract Administration. While authority for administration of individual construction or service (work-project type) contracts is in the contracting officer the basic work program responsibility continues to be vested in operating unit heads, such as division chiefs and forest supervisors. It is therefore incumbent upon each operating unit to inspect the technical phases of work projects it determines to perform by contracting. Because of the contractual authority of the contracting officer, it is essential that all matters affecting the contract, found during such inspections, must be coordinated and passed through him or his designated representative. For example, during the progress of the contractor's performance of the work, program divisions and/or forest supervisors concerned with the project have the responsibility to decide whether there is need to make any changes in technical specifications and plans, revision in material requirements, additional work not originally contemplated, and similar matters affecting the scope and nature of the project. Decisions reached will be made known to the contracting officer or his designated representative, as the case may be, for appropriate action. If the forest supervisor or his representative desires to make changes in technical specifications or general requirements established at the regional office or Washington office levels of organization, such changes will be reported through official channels to the cognizant program division for review and approval, and the contact with the contracting officer or his designated representative would then be as outlined above.

c. Over-All Responsibility of All Forest Officers. Any forest officer noting seriously unsatisfactory conditions on a contracted project should promptly report them to the contracting officer's designated representative. Where damages may be assessed due to nonperformance of any kind, it is particularly desirable that the contractor be placed on notice of this possibility in time to take action to avoid such assessment.

15. Termination for Nonperformance

a. Authority. Contracts after being entered into cannot be canceled without the consent of both parties except:

(1) Where the contracting officer has exceeded statutory limits.

(2) Where provisions covering cancellations are included in the contract.

b. Termination of Contractor's Right to Proceed. The failure to perform in accordance with the contract terms does

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not in itself create the necessity to terminate the right of the contractor to proceed with performance. The contractor should usually be given an opportunity to correct the deficiency. Generally, notice of termination should be given only when (1) the urgency of need is so great that immediate action must be taken, (2) it is evident that the contractor has no intention of completing his contract within a reasonable time, (3) the action is necessary to prevent accrual of excessive liquidated damages, (4) there is a violation of statutes applicable to contracts requiring termination, or (5) in the public interest (11 Comp. Gen. 81 and 384).

c. Notice of Termination. The notice of termination should be given to the contractor in writing, either by letter or telegraphic notice followed by a confirmation letter by registered mail, with return receipt requested. It should cite the provisions of the contract permitting termination of the contract and clearly state the background data and circumstances making such action necessary. The notice should also state the effective date of termination, the performance to be discontinued, and any special directions that can then be given regarding protection and disposition of Government property in possession of the contractor. If purchase elsewhere is contemplated, the contractor should be notified of his liability for any excess costs occasioned the Government by such action. A copy of the notice will be sent the surety if the contract is covered by a bond.

d. Mistake in Bids. There may be instances where mistake of a bidder in computing his bids will be sufficient cause for the Comptroller General to authorize rescission of the contract and release of the bidder from obligation thereunder (9 Comp. Gen. 160).

e. Violations of Statutes Applicable to Contracts. Contracts subject to the Davis-Bacon Act or the Walsh-Healey Act may be terminated if there has been a violation of the provisions thereof.

f. Subcontractors. While it is permissible for contractors to sublet portions of the job, the prime contractor remains liable for the proper prosecution and completion of the work. It is also required that the subcontractor be approved by the contracting officer. In the event of unsatisfactory performance by the subcontractor, the prime contractor should be promptly notified by the contracting officer and required to take such corrective action as is necessary. This may involve the assumption of the subcontractor's work by the prime contractor or replacement of the subcontractor by a competent subcontractor.

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It is the contracting officer's responsibility to determine that all contract provisions are being adhered to, whether the work is being accomplished in its entirety by the contractor or through subcontracting; therefore, such on-site inspection of subcontracting as necessary should be made to determine that the applicable provisions of SF-23A and any other provisions such as the nondiscrimination clause are being complied with.

16. Termination of Contracts When in Public Interest. It may happen that completion of a contract would be contrary to the public interest, due to circumstances arising after making the contract. In that connection the Comptroller General ruled in 18 Comp. Gen. 826 as follows (quoting from the syllabus):

"When the public interest so requires, a contracting officer may terminate a contract which he was authorized to make, and by supplemental contract, agree with the contractor upon the compensation to be paid for the work already performed, etc., provided the amount agreed upon is proper and just and is accepted by the contractor in full and final settlement of all rights incident to, or arising out of, the original and supplemental contracts, and even if no amount can be agreed upon the contract nevertheless may be terminated if administratively deemed in the interest of the United States, and the contractor left to present his claim to the Government accounting officers or the courts.

"The determination as to whether the public interest requires the termination of a contract is a matter of administrative decision and does not rest with the Government accounting officers who are concerned primarily with the availability of the appropriation for any expenditure resulting from the termination."

17. Right of Surety to Proceed. When it is evident that the contractor does not intend to perform in accordance with the contract, and the contract is covered by a performance bond, the surety will be informed and be given the opportunity to complete the contract. This will be done prior to any attempt to procure the supplies or services from other sources. Inform surety that the contract remains in full force and effect if surety elects to complete the work. Notification to surety should be in writing, sent by registered mail, return receipt requested, and should provide for prompt written notification by surety to the contracting officer whether surety elects to complete the contract. If surety refuses, in writing, to complete the contract, notify them by registered mail that the Government will proceed to have contract completed.

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18. Purchase Against Contractor's Account (Other Than Federal Supply Schedule Contractors)a. Purchase Against Account

(1) Authority and Procedure. The right to purchase against a contractor's account accrues at the expiration of the time limit set by the contract for the delivery of the material or the performance of the services. If the right is not exercised immediately when it accrues, the effect is to extend the contract time. Thereafter, before proceeding to make purchase against his account, it becomes necessary to set a new date for closing the contract and his date must allow a reasonable time in which to make delivery after notice thereof is given.

When necessary to exercise the right of purchase against a contractor's account, it should be done so as to avoid injustice to the contractor, and to adequately protect the Government's interest. As a general policy, the decision for or against making purchase against contractor's account shall rest upon three principal considerations, namely: Is the material urgently needed? Can the contractor be depended upon to deliver in time to meet the urgency? Can the material be obtained earlier by purchase other than from the contractor?

Failure to deliver within the contract time does not in itself create a necessity to buy forthwith against contractor's account. Instead, the necessity to buy forthwith arises from urgent need for the material, and conversely is avoided when urgency is lacking.

When the right to purchase against a contractor's account is exercised, only such part of the undelivered material as is necessary to meet urgent needs shall be bought under emergency purchase in the open market. Any remaining material shall be procured on competitive proposals.

On making purchase against a defaulting contractor's account, notice of such purchase shall be forwarded to the defaulting contractor, and his surety if any; and, if excess costs are involved, the purchasing officer shall make formal demand upon the contractor for payment.

A purchase made against the account of a defaulting contractor is not subject to the provisions of the Walsh-Healey Act where the stipulations were not included in the original contract.



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(2) Purchase From Other Sources. Invitations to bid shall be distributed as widely as possible, and other appropriate measures shall be taken in order that maximum competition may be obtained. The actual cost to the Government of the original purchase delivered at destination is the base for determining excess costs. Therefore, transportation costs, if any, on the new purchase to the destination shall be included and considered in the determination.

Purchase From Second Low Bidder. If the original solicitation of bids was comparatively recent and the price quoted by the second low bidder is reasonable and is considered as low as could be obtained otherwise, purchase may be made from the second low bidder if he agrees to furnish in accordance with his bid as originally made. In such a case, a contract should be entered into by acceptance of the second low bid.

Inviting New Bids. As a general rule, the procurement officer who made the original contract should invite new bids and thereby consummate the purchase against account. The invitation for bids should bear no reference to the fact that the proposed purchase is the result of a default on the previous contract. The invitation for new bids should include the same specifications and other terms as the original contract since, generally speaking, a defaulting contractor cannot be held liable for materials procured that differ from those contemplated by his contract or purchased under terms at variance with those of the original contract. Where, however, an item of the type covered by the original contract is no longer available, a similar item to meet the needs of the service may be procured and the defaulting contractor charged with the excess cost.

Bid From Defaulting Contractor. Invitations to bid should not be sent to the defaulting contractor, and in the event he does submit a bid in connection with the purpose, his bid, if low, shall be rejected and appropriate explanation made on bid file.

Degree of Competition. The request for new bids should be given as much publicity as the circumstances will permit; in fact, the matter of competition should be given just as much attention as in any other purchase made by the Government.

Open-Market Purchase in Urgent Cases. In cases where the need is so urgent that time will not permit further delay, advertising for bids may be dispensed with and purchases made in the open market on the basis of prices solicited in



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the most businesslike manner, all circumstances considered. If only a part of the material or service is needed immediately, that quantity only should be acquired by open-market purchase, the remainder being for purchase through normal procedures.

b. Appropriation Chargeable. There have been several decisions by the Comptroller General to the effect that when a contractor defaults on an expiring fiscal year contract, an order placed in the next fiscal year for the same material is still chargeable to the funds originally obligated (2 Comp. Gen. 130; 24 Comp. Gen. 555; 34 Comp. Gen. 239).

In 32 Comp. Gen. 565 it was held that since the general rule relative to obligating fiscal year appropriations by contract is that (1) the contract must be made within the fiscal year, covered by the appropriation sought to be charged and (2) the subject matter must concern a need arising within that fiscal year, replacement contracts may be charged to the same appropriation obligated with defaulted contract only if the original contract is terminated and replacement contract is awarded within a reasonable time.

In previous decisions (9 Comp. Dec. 10, 21 Comp. Dec. 107) ruling on similar cases, it was held that an annual appropriation may be used during the ensuing fiscal year when, during the fiscal year for which made, use of the appropriation had been prevented by default of a contractor. Accordingly, a "reasonable time" is to be construed as meaning the ensuing fiscal year.

The decisions make it clear that to the extent of available balances the appropriation(s) available under the defaulted contract is also available for payment of excess costs incurred by reason of the default. Should a case occur where there is not a sufficient balance in the appropriation originally obligated to cover the cost, any amount in excess of the available balance thereof would be charged to the current year's appropriation available for the same purpose: for example, original contract price \$10,000, new contract by reason of default \$15,000, available in prior year appropriation \$13,000, amount to be charged to current year's appropriation \$2,000. Such instances should be rare and the practice resorted to only where other action is not possible, such as readvertising in an attempt to secure a lower bid, or reduction of the quantity of items to be purchased.

#### 19. Contractor's Liability for Damage

a. General. A defaulting or delinquent contractor is liable for any damages which may reasonably be considered as arising in the usual course of things from the breach of contract. These

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damages may include such items as the excess cost of replacement purchase, added cost of overhead directly involved in the administration of the contract, rentals, demurrage, etc., to the extent that such damages are directly the result of the breach of contract, as opposed to losses that may be considered remote or conjectural, and are assessable even though the contract does not contain a provision for liquidated damages, and the Government subsequently accepts the delinquent deliveries (Comp. Gen. Dec. B-124041 of October 24, 1955). When a contract includes a liquidated-damage provision, the extent of the contractor's liability is fixed by that provision, and includes, in addition to the liquidated-damage assessment, only the excess cost of the replacement purchase.

b. Determination of Excess Costs. The excess costs chargeable to a defaulting contractor are fixed at the time the second contract is made. Subsequent price adjustments to the replacing contract will have no effect on the liability of the original contractor (22 Comp. Gen 1035). The excess costs to be charged against the account of a defaulting contractor are to be computed on the basis of the quantity required by the original contract, with consideration given to the variation clause, if any. When a default involves more than one item and the subsequent repurchase results in a saving on some items and excess costs on others, computation of damages must be made on the basis of the original contract as a whole (34 Comp. Gen. 4).

c. Liability of Original Contractor in Case of Default. When subsequent to default under a contract, purchase of the articles or services is effected from other sources, the original contractor is responsible for any excess cost occasioned the Government, plus accrued liquidated damages if provision was made therefor, unless he was prevented from completing his contract by causes excusable under the terms of his contract.

(1) Actual Damage. The actual damage for which the defaulting contractor may be liable is the amount by which the actual cost of the article or service exceeds the amount named in the defaulted contract. When the amount of the actual damage is ascertained the procurement officer should proceed as outlined in "Purchase Against Contractor's Account and Collection of Excess Costs" under FSM 6326.

(2) Related Damages. Delinquent contractors are liable for additional expenses reasonably flowing from the breach of contract. Such additional expenses were the subject of 18 Comp. Gen. 483, the syllabus of which is as follows:

Where because of the failure of the contractor to make delivery of furniture, etc., within the time limit of the

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contract it became necessary for the Government to maintain an office in the old quarters as well as pay partial rent in the new quarters for which the furniture was being procured, the additional expenses incurred by the Government are such as might reasonably be expected to flow from the failure to make timely delivery and therefore chargeable to the contractor notwithstanding the absence in the contract of a provision for damages and the lack of damage liquidation in advance.

d. Extent of Increased Cost Liability. The method of fixing the amount of liability of a defaulting contractor is described in 22 Comptroller General 1035 as follows.

Where a contractor defaults under its contract for furnishing supplies to the Government and a replacing contract is awarded to another contractor on the basis of specifications identical with those made a part of the defaulted contract, the rights and liabilities of the defaulting contractor are fixed at the time the second contract is made, and the defaulting contractor is liable for the difference between its contract price and the higher contract price fixed in the replacing contract, regardless of any subsequent adjustments in price that may be made between the Government and the replacing contractor to cover damages resulting from delivery of supplies not in conformity with the contract specifications.

20. Liquidated Damages

a. Enforcement. When a contract provides for payment of liquidated damages, enforcement of such provision is mandatory in the event of unexcused delay or failure to perform.

b. Improper Assessment of Liquidated Damages. Contracting officers have no legal authority to excuse a contractor from liquidated damages which are properly assessable under the terms of a contract. However, when the contracting officer determines that the facts are such that liquidated damages were improperly assessed, such erroneous action may be locally remedied by a reconsideration of facts and a decision rendered in favor of the contractor. Such action may be taken by the contracting officer, within the scope of his authority under the contract terms to settle disputes without recourse to the Secretary. In such cases written notice shall be given to the certifying officer through regular agency channels authorizing payment of the liquidated damages previously assessed in error. The above action should not be confused with the remission of liquidated damages, which is treated in item c.

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c. Remission of Liquidated Damages. The Comptroller General of the United States is authorized by law (41 U.S.C. 256a), on the recommendation of the Secretary, to remit such liquidated damages as in his discretion may be just and equitable. Claims for remission of liquidated damages must definitely establish equities on behalf of the contractor or merit favorable consideration by the Comptroller General. Equity, among other things, is used to describe the standing of a party to claim relief, the merit of the claim being dependent upon a showing as to his ability to have prevented the situation in which he finds himself (32 Comp. Gen. 67, 34 Comp. Gen. 251). Such claims shall be reviewed by the contracting officer, who shall prepare a findings of fact with his recommendation and forward the claim through the \*-chief, division of fiscal control.-\*

d. Proof of Damage. When the contract provides for the assessment of liquidated damages, it is not generally necessary for the Government to prove any damage or loss under such a provision and the question of whether the Government suffered any actual damage is not for consideration in determining whether liquidated damages should be charged (16 Comp. Gen. 374, 32 Comp. Gen. 67).

e. Excusable Causes of Delay. The contractor shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the contractor, as defined in clause 5 of SF-23A and clause 11 of SF-32. The contracting officer shall determine the facts of the delay, prepare a findings of fact, and extend the contract time if the delay is determined to be excusable under the contract terms.

The timely procurement of labor and materials necessary for the required performance of a Government contract is the responsibility of the contractor. \*-Under the standard default provision of SF-23A, the prime contractor is responsible for delays of subcontractors or suppliers unless the delays were due to causes which could not have been foreseen by either the contractor or such subcontractors or suppliers (39 Comp. Gen. 343). It should be noted, however, that the unforeseeability requirement is omitted from the General Provisions of SF-19.-\*

When considering the facts of a particular case, the contracting officer should keep in mind the various decisions of the Comptroller General wherein there was considered the admissibility of causes as being excusable under the terms of the contract. Some of those decisions, dealing with the broader principles, follow.

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10 Comp. Gen. 433. "Under the standard Government form of contract there is no legal authority for the remission of liquidated damages accrued to the Government for delays in the work thereunder, excepting for the period of delay shown to have resulted from unforeseeable causes beyond the control and without the fault or negligence of the contractor, or unless performance of the contract is rendered impossible by the act of God, of the law, or of the Government."

10 Comp. Gen. 186. "Severe winter weather conditions, consisting of constant and heavy rains, an ordinary flood or freshet, and freezing and zero weather, are a part of the general hazard assumed by a contractor in connection with the performance of

(Continued on next printed page)



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his contract with the United States, and they are not to be classed as 'acts of God,' to excuse delays, unless so abnormal, extraordinary, or unusual, and of such severity that they could not reasonably have been considered as foreseeable so as to be provided against in the contract."

16 Comp. Gen. 936. "Findings of fact of a contracting officer as to delays are binding upon all parties concerned where so stipulated in the contract, in the absence of appeal therefrom as provided therein, but it is within the province of the General Accounting Office, or the courts, to determine whether under those findings, and the contract terms, the contractor is liable as a matter of law for liquidated damages, and, in determining the amount of such damages chargeable to a contractor, delays excusable under the terms of the contract as unforeseeable during the specified contract performance period may not be reduced by the number of abnormally good weather days in the post contract period, notwithstanding the contracting officer's findings of fact to the contrary."

17 Comp. Gen. 231. "Where heating plants installed under Government contract failed to meet specifications and after repeated attempts to remedy and correct the defects, the contractor concluded that it would be impossible to attain the efficiency required by the contract, the acceptance by the Government of said plants at prices sufficiently reduced to compensate the Government for the excess cost of their operation does not justify the remission of liquidated damages for collection because of the delays involved."

## 21. Collection of Damages

a. Withholding Payments. As soon as it becomes known to the contracting officer that a contractor has defaulted on a contract, the certifying officer shall be notified in writing, through the regular agency channels, to withhold any and all payments then due or which may thereafter become due the defaulting contractor, pending purchase against his account and subsequent determination as to whether or not any excess costs or other damages are involved.

b. Demand for Payment of Damages. On making purchase against a defaulting contractor's account, notice of such purchase shall be forwarded to the defaulting contractor, and if excess costs or other damages are involved, the purchasing officer shall make formal demand upon the contractor for payment. In making determinations of excess costs, procurement officers will take into consideration cash discounts offered in the defaulting contractor's bid. Since the Government usually effects payment within the allowed discount period, contractor's

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liability in connection with excess costs shall extend equally to cash discounts offered (15 Comp. Gen. 177).

c. Disposition of Damages Collected. Any amounts representing excess costs or other damages collected from the contractor, shall be deposited to Miscellaneous Receipts (FSH 6532). The deposit shall be accompanied by a letter of transmittal or other advice making appropriate reference to the number of the defaulted contract, in order that the deposit may be properly identified and to provide notice to the certifying officer that collection of damages has been made and that vouchers covering payments due the contractor and being withheld may be passed for payment. If no damages are involved, written notice thereof shall be given to the certifying officer through the regional fiscal agent in order that any vouchers covering payments due the contractor and being withheld may be passed for payment.

d. Failure To Collect From Contractor; Demand on Guarantor. If collection from the contractor is not effected and a performance bond or other guaranty has been furnished, the guarantor will be notified of the default on contract, and a formal demand made on such guarantor for the amount of the damages. If collection from the guarantor is effected, the funds so collected shall be handled in the manner outlined under item c above.

e. Failure To Collect From Contractor or Guarantor; "Statement of Damages." If collection is not made by the procurement officer from either the defaulting contractor or his surety, a "Statement of Damages" shall be prepared and forwarded through agency channels to the Comptroller General. Such statement shall include all facts pertinent to the default, amount of damages, method of computations, etc., and shall constitute additional notice to all concerned to withhold certification and/or payment of vouchers in any amount which may be then due or which may become due in the future, until the amount so withheld shall equal the amount of the damages. The procurement office shall maintain an accurate record of the entire transaction to provide such additional information or clarification of data as may be required by the General Accounting Office.

22. Liability of Successor Contractor. The question of the division of liabilities where more than one contract is required to obtain a single objective was settled in 15 Comp. Gen. 149, as follows:

Where it becomes necessary to enter into a contract with a second contractor because of the default of the first contractor and because of the partial default of the second contractor, a contract becomes necessary with a third contractor, the liability of the

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first defaulting contractor is fixed at the time the second contract is made and the liability of the second defaulting contractor is fixed at the time the third contract is made.

23. Liability of Completing Surety. When a surety undertakes to complete the contract of its principal whose right to proceed was terminated, liquidated damages are chargeable to the surety to date of completion, and payment under the contract will be made to the surety. If the surety does not elect to complete the contract, then the surety is chargeable for liquidated damages to the date of termination of the contract, plus all excess costs occasioned the Government in having the work prosecuted to completion.

24. Compliance With Laws, Statutes, or Ordinances. Contracting officers will determine that all applicable Federal or State laws or local ordinances applicable to a contract are being complied with. Noncompliance may in some instances constitute justification for contract termination. Before any termination action is taken, all the facts should be presented for consideration of the General Counsel and his decision will be the basis for the action to be taken.

25. Nondiscrimination in Employment by Contractors

a. Purpose. This section prescribes policies and procedures for carrying out the intent of Executive Order 10479, as amended by Executive Order 10482, which establishes the President's Committee on Government Contracts and assigns responsibilities for obtaining compliance by contractors with the nondiscrimination provisions of contracts, and the Presidential directive dated May 4, 1957, which requests that a firmer approach be adopted in determining whether prospective contractor or contractors are responsible and accordingly eligible to receive awards or additional awards of contracts. See item 6 under FSH 6322.1 for the requirement for inclusion of the nondiscrimination provision in all contracts.

b. Nondiscrimination in Employment by Contractors -- Policy. Effective measures will be taken by regional foresters and directors to assure compliance by contractors with the nondiscrimination provisions of contracts. Full cooperation will be given to the President's Committee on Government Contracts in its efforts to carry out the intent of Executive Order 10479, and the Presidential directive dated May 4, 1957.

c. Responsibilities of the Department. The Executive order provides that the head of each contracting agency of the Government of the United States shall be primarily responsible for obtaining compliance with the nondiscrimination provision of contracts made by his agency and shall take appropriate measures to bring about the said compliance. The Administrative

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Assistant Secretary has been designated as the representative of the Secretary to carry out the Department's responsibilities for obtaining such compliance.

d. Forest Service Responsibility. The Chief, Branch of Procurement Management, Division of Administrative Services, has been designated as the representative of the Chief to carry out the Forest Service responsibility for obtaining such compliance. He will be responsible under the policies and procedures set forth in the Administrative Regulations of the Department for the establishment of procedures and the issuance of instructions to insure compliance, and for the taking of appropriate action when violations are discovered and reported.

e. Determination of Compliance. Contracting officers shall be responsible for determining compliance with the nondiscrimination provisions in Government contracts to the same extent as any other contract provision. Contracts for off-the-shelf items are generally of short duration and accordingly do not lend themselves to the making of detailed checks or investigations of contractors' employment practices, either before or after award. (Any apparent violations, however, should be investigated to determine the facts, and appropriate action taken.) When contracts contemplate a continuity of contact between the contracting agency and the contractor, such as those for construction work, continuing services, or requiring special manufacturing, a better opportunity is afforded for reviewing the contractor's nondiscrimination policies and practices and for evaluating their adequacy. The extent of compliance determination action will be consistent with other contract administration action as follows:

(1) Preaward Action. In connection with contracts where investigation of the contractor's responsibilities is undertaken for any reason, effort to the extent feasible should be made to establish his employment practices. Conversely, if no affirmative action is necessary to determine the responsibility of a bidder as to financial status, experience, capacity, etc., in the absence of knowledge of discriminatory practices by the proposed contractor, no action would necessarily be taken for the sole purpose of determining his employment practices. Wherever practicable, however, considering the circumstances of each case, determination will be made whether a contractor is responsible. Where the prospective contractor's employment record shows that he will not be able to conform to the requirements of the nondiscrimination provision, award will be denied him in accordance with FSM 6320. Report of such denials, with appropriate facts in each case, will be made to the Washington office.



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(2) Postaward Action. Reviews of a contractor's performance for other purposes will include a review of his compliance with the nondiscrimination provisions. The contracting officer's designated representative will report violations to the contracting officer.

(3) Special Compliance Reviews. When special compliance reviews of selected contractors are requested by the Government Central Committee and assigned to the Forest Service, the regional forester or director, to whom the compliance review is assigned by the Chief, will designate an officer to review the nondiscrimination policies and practices of such contractors. The officer so designated will be an incumbent of a position delegated contracting authority under FSM 6320. In no event will an incumbent occupying a position below the regional supply officer or station administrative officer be so designated.

f. Compliance Criteria. The nondiscrimination provision does not refer to, extend to, or cover the activities or business of the contractor which are not related to, or involved in, the performance of the contract entered into. The contract provision applies not only to hiring practices of the contractor but to the various aspects of employment, including work assignment, promotions, layoff, and opportunity for training on the contract work. These factors should be observed when making reviews of contractors' compliance with the provisions. Some of the considerations in evaluating the contractors' personnel policies are shown below. (Note: The President's Committee on Government Contracts has issued a manual for the guidance of personnel engaged in obtaining compliance with the National Equal Job Opportunity Program, as set forth in Executive Orders 10479 and 10557. Copies of this pamphlet may be obtained from the Chief's office.)

(1) Hiring Practices. Recruiting and hiring practices should be consistent in all respects with the policy of non-discrimination. Discriminatory practices include specifying race, color, or religion in recruitment advertising or in requisitions on employment agencies, or requiring applicants to check such items on application forms. Segregating interview lines or application files is inconsistent with the policy.

(2) Employment of Minorities. The pattern of minority employment on a particular contract evaluated in relation to the availability in the locality of minority workers possessing the skills required by the contractor will give an indication whether there may be discrimination against



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minority groups. The employment patterns in other plants in the area may also provide a basis for evaluation.

(3) Training Programs. Training programs are important in evaluating discrimination practices, since a pattern once established in the selection of trainees tends to be perpetuated at all job levels. This is particularly important in construction contracts in connection with building trades apprentice training programs where the selection of trainees is a responsibility which the contractor shares with the craft unions.

g. Complaints and Reports of Violations. The regional supply officer or station administrative officer shall promptly investigate in person all complaints of discrimination, regardless of the source, and prepare written reports setting forth in detail all pertinent facts, including the name and address of the complainant, the name and address of the contractor, location where the alleged violation occurred, contract number, if any, description of contract, statement of the complaint, pertinent facts developed in the investigation, whether there was a violation of the nondiscrimination provision, and measures taken by the contractor to remedy the situation causing the complaint. Similar action should be taken by the regional supply officer or station administrative officer on violations reported by the contracting officer's designated representative. Three copies of each such written report shall be forwarded to the Chief's office for transmittal to the President's Committee on Government Contracts through the Department.

h. Violations. The nondiscrimination provision is an integral part of the contract and is binding on the contractor. Violations of the provision should be called to the attention of the contractor in writing and compliance therewith should be insisted on the same as in the case of other contractual provisions and conditions. Ordinarily, presentation of the facts to the contractor with a request for compliance should be sufficient to obtain corrective action. As a matter of policy, it is desirable that any correction of a contractor's employment practices which may be necessary to eliminate violations should be arrived at through education, conciliation, mediation, and persuasion wherever possible. Where such efforts prove to be unsuccessful, a complete report in triplicate of the facts should be made to the Chief's office.

i. Cooperation With the President's Committee on Government Contracts. Under the terms of Executive Order 10479, the President's Committee on Government Contracts is empowered to make recommendations to the contracting agencies for improving and making more effective the nondiscrimination

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provision of contracts and to receive and transmit to contracting agencies complaints of alleged violations of such provision. Advice of any such recommendations or complaints shall be presented to agencies of the Department through the Office of Plant and Operations. Contracting officers will cooperate in giving prompt and effective attention to these matters and make such reports as may be required with the least possible delay.

26. Conflicting Contract Provisions (Disputes as to Intention). Whenever it happens that general technical specifications are in conflict with specific, more detailed specifications of the contract, the specific specifications will apply.

27. Action To Be Taken on Delay in Contract-Performance or Nonperformance

a. Delays in Performance

(1) Contracting Officer's Responsibility. It is normally the function of the contracting officer to maintain such records and to establish such procedures as will insure performance in accordance with the terms of the contracts.

(2) Notification to Contractor of Delinquency. When a contractor fails to make delivery of materials as specified, or within the delivery time specified, the contracting officer should notify him of that fact and request advice as to when performance in accordance with the provisions of the contract may be expected.

(3) Action by Contracting Officer in Event of Delay. It is the duty of the contracting officer to take such action under the contract as will best meet the needs of the Government. That action must be taken only after full consideration of all pertinent facts. The courses of action are as follows:

Extension of Time for Performance. If the contractor advises that the delay is temporary and promises performance within the near future, the contracting officer should carefully weigh that advice against the following factors:

How urgent is the need of the Government?

Will the new delivery time promised by the contractor meet the requirements of the Government?

Would purchase from other sources serve to expedite the matter? Enough to be of consequence?

Would purchase from other sources constitute a gross injustice to the contractor?

Is the delay excusable under the terms of the contract?

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Where the contract contains the usual provisions relating to delays (SF-32) and the contracting officer finds that the interests of the Government would be best served thereby, he may extend the time for completion of the contract for such time as is reasonable.

b. Delivery Time a Factor in Award. In the event, however, the contract was awarded on the basis of delivery time and a lower bid offering a longer delivery time than specified was rejected in favor of a higher bid meeting the specified delivery time, the delivery time may not be extended, since the Comptroller General has ruled as follows:

Where the advertisement for bids had informed prospective bidders that time of delivery would be considered an important factor in making the award and a higher bidder was awarded the contract because it proposed to make delivery within a shorter period of time than the lower bidder, and the contractor was delayed in delivery, there will be deducted from the contract price a proportionate amount of the difference between the low bid and the accepted bid based on the ratio between the number of days' delay in making delivery to the difference in time stated in the accepted figure and the low figure (9 Comp. Gen. 65; 10 Comp. Gen. 191 and 17 Comp. Gen. 619).

When the contract was awarded to other than the low bidder on the basis of earlier delivery, and no provision was made in the specification or contract for the assessment of damages for delay in delivery, the Comptroller General has ruled as follows:

While a Government contractor had actual notice that award was made to it at a higher price because it promised earlier delivery than the low bidder, in the absence of any agreement--expressed or implied--in the specifications accompanying the invitation for bids, or in the contract, providing for the assessment of damages in the event of late delivery, damages incident to the contractor's failure to make delivery within the specified time may not be assessed on the basis of the difference between the contract price and the low bid, and, therefore, the contractor is entitled to payment of the contract price unless actual damages were sustained by the Government as a result of the delay (9 Comp. Gen. 65, overruled; 28 Comp. Gen. 717; 10 Comp. Gen. 191).

c. Findings of Fact. When the contract provides for assessment of liquidated damages for delays, the contracting officer may not extend the time for performance beyond that provided for in the contract unless he finds that the delay was

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caused by circumstances excusable under the terms of the contract. The finding of the contracting officer should be in the form of a "Findings of Fact" as outlined under items 4 and 5 of FSH 6328.

**28. Debarment of Bidders**

a. Procedure. All requests for debarment of bidders will be submitted through channels to the Chief, Section of Procurement and Property Management, together with a complete statement of facts and the reason for such request. Procurement officers will not debar bidders without express permission in writing from the Chief, Section of Procurement and Property Management. The Comptroller General in 7 Comp. Gen. 547 stated the position of his office regarding debarments, as follows:

When the interests of the United States require the debarment of a bidder, no question will be raised by this office with respect thereto, provided the length of time of such debarment is definitely stated and not unreasonable, and the reasons for debarment, with a statement of the specific instances of the bidder's dereliction, are made of record and a copy thereof furnished the bidder and this office. Such should be the procedure with respect to the debarment of bidders hereafter.

b. Effect of Single Transaction. Procurement officers will not ordinarily submit recommendations to debar bidders based on circumstances involved in a single transaction or involved in isolated transactions. Recommendations for debarment will not ordinarily receive favorable consideration by the Section of Procurement and Property Management unless the facts submitted definitely indicate that bidder's derelictions are several and constant.

c. Debarment Procedure. All requests for the debarment of bidders, in connection with procurement transactions, will be submitted by the head of the agency through channels to the Office of Plant and Operations, together with a complete statement of facts and the reason for such request, for appropriate action. Debarments will be made on the basis of the following causes and conditions:

(1) Criminal conviction by a court of competent jurisdiction (a) for commission of fraud in the obtaining of contracts or in the performance thereof; (b) under the Federal Antitrust Statutes arising out of the submission of bids or proposals; and (c) for commission of a criminal offense as an incident to obtaining a contract or in an attempt to obtain

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a contract. In the event appeal taken from such conviction results in reversal of conviction, the debarment shall be removed if the bidder so requests.

Note: Criminal conviction for the above-mentioned offenses does not necessarily require that the firm or individual be debarred. The decision to debar is still within the discretion of the Department. The seriousness of the offense, the civil satisfaction received by the Government or available to the Government, and all mitigating factors should be considered in making the determination to debar.

(2) Violation of contract provisions, as set forth below, of a character which is regarded by the agency involved to be so serious, clear, and convincing as to justify debarment action.

Willful failure to deliver in accordance with the specifications or within the times of delivery provided in the contract.

A history of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts.

Violation of the contractual provision against contingent fees.

Acceptance of a contingent fee, which is paid in violation of contractual provision against contingent fees.

(3) Failure to comply with the provisions of section 3(a) of the Buy-American Act.

(4) Debarment by some other executive agency. Debarment shall be made on the same basis as provided for causes (1) and (2), whichever is appropriate, and may be based entirely upon the record of facts obtained by the original debarring agency, or upon a combination of additional facts with the record of facts of the original debarring agency. Debarments made by other executive agencies under section 3(b) of the Buy-American Act will in all cases be included on the Department's list of debarred bidders.

(5) The debarment shall be for a reasonable, definitely stated period of time commensurate with the seriousness of the offense.



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d. Notices of Debarment. The following procedure will be used in handling notices of debarment:

The Department will perform the following functions with respect to debarment actions.

(1) The firm or individual debarred by the Department, or intended to be debarred, shall be given written notice thereof by the debarring officer except in the case of item c(4) above. The notice shall state as a minimum the period of debarment, including a statement of the specific instances or dereliction; and shall provide reasonable opportunity for the contractor to present information for consideration upon his behalf. When the contractor does present such information, he shall be given written notice of the final decision, and, if the decision provides for debarment, the period and effective dates thereof.

(2) A copy of all notices of debarment actions taken by the Department in accordance with item c above shall be furnished, at time of issuance, to the General Services Administration. The General Services Administration will also be notified of any removals from such debarments.

(3) The Office of Plant and Operations will check the list of debarred bidders furnished by the General Services Administration and consider firms or individuals listed thereon for inclusion in the list of the Department.

(4) The Office of Plant and Operations will, as needed, request from the General Services Administration a copy of the notice of any debarment case appearing on the list compiled and distributed by that agency. If desired, direct inquiry concerning any debarment case may be made of the agency which originated the action.

The General Services Administration will perform the following functions with respect to debarment actions:

(1) Compile and distribute to the designated central office of each executive agency a listing of the administrative debarments and debarments under the Buy-American Act taken by such agencies, including the basis of action, in order that each executive agency may be informed of actions taken by each other agency. In general application, this listing will be for information purposes only and it is not intended to take the place of, or be an addition to, the lists maintained by the various agencies.

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(2) Furnish to the Department, on specific request, a copy of the notice reflecting the basis for debarment action taken by another agency for causes contained in item c above.

29. Correspondence With Contractors. Correspondence with contractors relating to performance of contracts should be by the contracting officer or someone specifically authorized by him.

6326.2 - Requirements for \* \* \* Administration of Supplies, Equipment, and Services Contracts

6326.21 - Diversions of Deliveries. In cases where it is necessary that shipment of material be diverted to a point other than that designated in the contract, the contracting officer should modify the terms of the contract to that extent. Contracts should be so modified only when it is in the Government's interest. When the contract price includes "delivery to destination" and the cost of transporting the goods to the new destination is less than to the original destination, the contractor must allow the Government the benefit of the difference; in the event the transportation charges to the new destination are greater, the contractor is entitled to reimbursement for this added expense.

6326.22 - Bond or Receipt in Lieu of Actual Delivery. All materials, supplies, and equipment must be actually delivered into the possession of the Government and inspection and acceptance thereof completed before voucher may be passed for payment. Contractors may not hold materials, supplies, or equipment in their own warehouses or factories and issue warehouse receipts or bonds guaranteeing future delivery. Such action does not constitute delivery within the purview of section 3648, Revised Statutes. Thus, such bond or receipt may not be accepted in lieu of actual delivery as a basis for payment. (Comp. Gen. Dec. A-56523, to Federal Civil Works Administration, Dec. 2, 1934, unpublished.)

6326.3 - Labor-Standard Requirements for Public Works Contracts.  
\* \* \* There follows a detailed explanation of each labor-standard requirement;

1. Authority for Labor-Standards Enforcement. Reorganization Plan 14 of 1950 provides that to assure coordination of administration and consistency of enforcement of the labor-standard provisions of various designated acts by the Federal agencies responsible for the administration thereof, the Secretary of Labor shall prescribe appropriate standards, regulations, and procedures which shall be observed by these agencies.

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2. Enforcement of Labor-Standards Provisions. The enforcement of labor-standards provisions of contracts is in the same category as other requirements of the contract specifications. Failure to comply with such labor standards requires adjustment by contractors and subcontractors and, in addition, may result in imposition of penalties. All concerned with enforcement of the labor-standards provisions of contracts should therefore be thoroughly familiar with these contract provisions. To aid in developing familiarity with the requirements for investigation and enforcement of the labor-standards provisions, the Secretary of Labor has issued a pamphlet entitled Investigation and Enforcement Manual With Respect to Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction Pursuant to Regulations, Part 5, of the Secretary of Labor. Each contracting officer and designated representative on construction contracts shall obtain and use this pamphlet in the investigation and enforcement of labor standards. Wherever this pamphlet refers to affidavits the word "statement" will be substituted until appropriate revisions are made by the Department of Labor. The pamphlet may be obtained from the Procurement and Property Management Division, Office of Plant and Operations, upon requisition through the Washington office.

Upon request of the Secretary of Labor, the agency head, or such persons as he may designate for that purpose, shall transmit information with respect to contractors and subcontractors, their contracts, and the nature of the contract work as may be desired by the Secretary of Labor.

Contractors shall be reminded of their obligation to comply with all applicable laws and regulations. For public works contracts, this matter can be covered during the contract review prior to start of work. Forest Service contracts do not contain all the labor laws; therefore, \*-contractors or contractor employees who inquire concerning applicability or interpretation of the Fair Labor Standards Act shall be advised that rulings concerning such matters fall within the jurisdiction of the Department of Labor, and shall be given the address of the appropriate regional office of the Wage and Hour and Public Contracts Divisions of the Department of Labor. Also see article 5 on Form 6300-3, Specifications for Construction of Forest Development Roads and Bridges--General Requirements.-\*

3. Interpretation of Kickback Regulations. There have been instances of misunderstandings as to the requirements of paragraph 3.5 of the regulations issued pursuant to the Kickback Law. The following interpretations were furnished by the

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Assistant to the Secretary of Labor in a letter dated November 7, 1944, to the Chief, Division of Purchase, Sales, and Traffic. Contracting officers should note these interpretations in order that they may be in a position to advise contractors, should any question arise on the subject.

- a. Payroll Deductions Covered by Paragraph 3.5(b). Generally, this paragraph governs all payroll deductions not specifically mentioned elsewhere in the regulations, when the entire proceeds of the deductions are to be paid over to and retained by a third person who is independent of, and in no manner affiliated with, the contractor or subcontractor making the payroll deductions.
- b. Deductions Without Prior Approval. It appears that contractors and subcontractors, generally, believe that prior permission must be granted by the Secretary of Labor before payroll deductions governed by paragraph 3.5(b) may be made; this is not the case. As provided in paragraph 3.5(b) of the regulations, after application in good faith has been made, as required in that paragraph, the deductions may be made in accordance with the standards outlined therein. It is not necessary that the Secretary of Labor approve the application, or even acknowledge receipt of it, before the deductions may be made.
- c. Application for Approval of Deductions. Paragraph 3.5(b) requires that an application must be made to the Secretary of Labor, and that a copy must be forwarded to the contracting agency. The application must state all the pertinent facts regarding the proposed payroll deductions, which facts must indicate that the conditions specified in paragraph 3.5(b) will be complied with. This means that there should be a full and complete description of the purpose to be served by the deductions, the reasons why they are proposed, the manner in which they are authorized by employees, the name and business of the recipient of the proceeds and his affiliation, if any, with the applicant, and any other pertinent facts.
- d. Statement of Facts To Support Certification. Many applicants quoted verbatim subparagraph 3.5(b)(1) through (4), certifying that those conditions will be met. Although the inclusion of such a certification may be desirable in order to ensure that each requirement of the standards will be met, such a certification alone is not a sufficient application. There should accompany such a certification a statement of facts from which it must necessarily be



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inferred that the conditions stated in those subparagraphs will be met. An application would also identify that project on which the applicant is engaged, and should name the Federal agency involved.

e. Permission To Make Other Types of Deductions. Under paragraphs 3.5(a) and (2), general permission is given to make payroll deductions for the purposes enumerated therein, without obtaining the approval of the Secretary of Labor and without submitting an application. Deductions covered by paragraph 3.5(d), however, may be made only after written permission has been obtained from the Secretary of Labor by contractor or subcontractor.

4. Weekly Submission of Copies of Payrolls. \*- Contractors are required, by the labor-standards provisions of the contract, to submit weekly to the contracting agency copies of all payrolls together with a statement that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor, and that the classifications set forth for each laborer or mechanic conform with the work he performed. These copies of payrolls should be examined as may be necessary to ensure compliance with the labor-standards provisions of the contract. The Secretary of Labor has developed payroll forms SOL-184 and 185 for voluntary use of contractors and subcontractors on construction contracts subject to the Davis-Bacon Act and related acts. These payroll forms, when properly filled out, meet all the requirements of the Department of Labor Regulations, parts 3 and 5 (29 CFR, subtitle A), as to payrolls submitted in connection with contracts subject to the Davis-Bacon Act and related acts. Also, no other certification or statement other than that appearing on the payroll form SOL-184 is necessary as a prerequisite to partial or progress payments or payment in full to the contractor. Forms SOL-184 and 185 can be obtained from Central Supply Section. See 5 AR, Appendix of Laws, 136 and 137, for regulations of the Secretary of Labor setting forth the requirements for examinations, investigations, and reports that may be required; see also the Investigation and Enforcement Manual referred to in item 2. Payrolls will be filed in contract folders, either in the office where payments under the contract will be initiated or in the office where payments are approved.

5. Statement of Compliance. No payments, advance, grant, loan, or guarantee of funds shall be approved unless there is on file with the agency a statement by the contractor that the labor-standards provisions of the contract have been complied with or that there is an honest dispute with respect thereto. See item 4 concerning the use of payroll form SOL-184 which, when properly filled out, meets this requirement.-\*



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6. \*- Weekly Submission of Copeland Act Statements. In addition to the payrolls required, contractors and subcontractors are required by the Copeland Act to submit weekly statements with respect to wages paid employees during the preceding week. The format of this statement appears below, and may appear on the payroll or be submitted separately. After examination and check, the statement should be preserved in the agency's files for 3 years from completion of the contract. See item 4 concerning the use of payroll form SOL- 184 which, when properly filled out, meets this requirement. - \*

Weekly Statement of Compliance

\_\_\_\_\_, 19\_\_

I, (Name of signatory party), (Title), do hereby state: That I pay or supervise the payment of the persons employed by (Contractor or subcontractor) on the (Building or work); that during the payroll period commencing on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_, and ending on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said (Contractor or subcontractor) from the full weekly wages earned by any person, and that no deductions have been made either directly or indirectly from the full weekly wages earned by any person, other than permissible deductions, as defined in regulations, part 3 (29 CFR part 3), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 40 U.S.C. 276c), and described below:

(Paragraph describing deductions, if any)

\_\_\_\_\_  
(Signature and title)

Upon award of the contract, the successful bidder shall be furnished by the Department agency concerned with a copy of the regulations of the Secretary of Labor pursuant to the above law. If there is an agency representative on the site of the job, the contractor should be instructed to deliver to him the weekly statements required by paragraph 3. 3 of those regulations. If there

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is no representative at the site, the contractor should be instructed as to where they are to be mailed.

7. Nonlabor-Rate Employees. Classification or reclassification of laborers and mechanics not listed in labor rates may be accomplished by agreement between the contracting officer, the contractor, and the employee (or his representative if in a union area). If in a nonunion area, the rate established should be the prevailing rate for the classification in that area which may be determined by inquiry of contractors engaged in similar work. Report of such classification or reclassification is to be made to the Labor Department. If the Labor Department does not agree they will advise the appropriate classification.

\*-8. Irregularities and Withholdings Under Davis-Bacon Act

a. Purpose. The General Accounting Office is responsible for the following functions in connection with irregularities and withholdings under the Davis-Bacon Act (Comp. Gen. B-3368, March 19, 1957).

- (1) Determining whether or not violations occurred in a sense that requires debarment.
- (2) Paying aggrieved employees amounts to which they are entitled when funds have been withheld from a contractor to cover such wage underpayment.
- (3) Settling claims of contractors based upon amounts which may have been withheld.

In determining the propriety of debarment action, the General Accounting Office must distinguish between technical and substantial violations.

Technical violations are those which have resulted from inadvertence or legitimate disagreements concerning classification.

Substantial violations are those the intentional nature of which is demonstrated by bad faith or gross carelessness in observing obligations to employees with respect to the minimum wage provisions of the act.

The General Accounting Office bases its decision on written evidence, most of which is supplied by the contracting officer. Therefore it is important that precise and complete records be maintained. In addition, the General Accounting Office gives careful consideration to the administrative determinations and recommendations made by the contracting officer. -\*

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**\*-b. Procedure for Processing Cases.** The following procedures and suggestions, which are quoted from the Comptroller General's letter cited above, and which are designed to achieve greater efficiency in processing Davis-Bacon-Act cases, shall be adhered to.

(1) In every instance when disregard of obligations to employees has been found, a comprehensive report, describing the nature and extent of irregularities, and presenting the evidence relied upon to establish their existence, is required. The essentials of such a report include: A chronological narration of the facts; a copy of any investigative report and exhibits, including payrolls submitted to the Government and other pertinent documentary evidence; copies of correspondence showing administrative action with respect to the exaction of compliance and actions taken or explanations proffered by offenders; and any additional information, evidence, or recommendations believed to be useful in Forest Service determinations.

(2) Such comprehensive reports are necessary in all instances, and they should be forwarded direct to the Comptroller General (Claims Divisions) Washington 25, D. C., unless required to be reported through the Department of Labor pursuant to its regulations. Failure to withhold monies for wage underpayments, or the fact that wage underpayments have been corrected, does not obviate furnishing factual reports.

(3) Reports should give definite information as to the finality of administrative determinations with respect to wage underpayments and as to contractors' compliance therewith. Until it can be demonstrated that administrative determinations of wage underpayments have become final in the sense that a contractor has acquiesced in them or has no further recourse through appeal, Federal payments to employees out of funds collected from a contractor not only would be hazardous but might result in improper payments. Also, an incurrence of expense to make such disbursements clearly would be inappropriate in any instance where Federal intervention might not actually be necessary to discharge the obligation imposed primarily upon contractors and subcontractors. In other words, the General Accounting Office should be advised as to how a determination of underpayment becomes finally binding upon a contractor and in what manner it is evident that a contractor thereafter refused to comply.

(4) Should wage underpayments be corrected by contractors or subcontractors to the satisfaction of the agency.\*

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\*-in charge of a contract, evidence of such corrective payments need not be furnished. An appropriate certification that adjustments have been verified will be satisfactory for purposes of the report.

c. Suspension of Payments. When the contractor or subcontractor fails or refuses to pay employees the rates of wages as established in the contract, the contracting officer shall take action to suspend the payment of funds to such contractor until the violation is discontinued and/or until sufficient funds have been withheld to compensate the employees for the wages to which they are entitled (5 AR, App. 137-5.8).

(For fiscal accounting reports required in connection with this section, see title 7 of the Administrative Regulations.)\*

9. Deductions From Payments for Violations of Eight-Hour Law

a. Penalty Deductions. As provided in the Eight-Hour Law (40 U.S.C. 324), the wages of every laborer and mechanic employed by the contractor or any subcontractor engaged in performance of the contract shall be computed on a basic-day rate of 8 hours and work in excess of 8 hours per day is only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of 8 hours

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in charge of a contract, evidence of such corrective payments need not be furnished. An appropriate certification that adjustments have been verified will be satisfactory for purposes of the report.

c. Suspension of Payments. When the contractor or subcontractor fails or refuses to pay employees the rates of wages as established in the contract, the contracting officer shall take action to suspend the payment of funds to such contractor until the violation is discontinued and/or until sufficient funds have been withheld to compensate the employees for the wages to which they are entitled (5 AR, app. 137-5.8).

(For fiscal accounting reports required in connection with this section, see title 7 of the Administrative Regulations.)

9. Deductions From Payments for Violations of Eight-Hour Law

a. Penalty Deductions. As provided in the Eight-Hour Law (40 U.S.C. 324), the wages of every laborer and mechanic employed by the contractor or any subcontractor engaged in performance of the contract shall be computed on a basic-day rate of 8 hours and work in excess of 8 hours per day is only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of 8 hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this law, a penalty of 5 dollars shall be imposed for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than 8 hours on contract work without receiving compensation computed in accordance with the above. Such penalty shall be imposed whether or not the violation is determined to be willful. However, where investigation shows that the failure to pay appropriate compensation was inadvertent and without negligence on the part of the contractor or his agents, and restitution is made to the employee, the case may be referred through the Office of Plant and Operations to the Department of Labor for determination as to whether the delayed payment of the extra amount due employees may be considered as compliance with the act. Pending such determination, an amount sufficient to pay the penalty, if assessed, should be withheld from payments due the contractor.



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b. Deductions for Underpayments. Where the contractor fails or refuses to pay employees at rates required by Eight-Hour Law, and investigation establishes that employees are entitled to payment, there shall be withheld from the amounts due the contractor so much as will represent the difference between the amount actually paid and the amount due the employees. If the contractor later pays employees the amounts due, the withheld contract payments may be released to the contractor. However, in the event of the contractor's refusal to make payment to the employees, there is clearly a failure of consideration under the contract and amounts representing nonpayment of overtime compensation will be withheld. (Comp. Gen. B-117954 of Apr. 20, 1954, to the Administrator of GSA.)

10. Deductions From Payments for Violations of Copeland Act. Where violations of the Copeland (Anti-Kickback) Act are determined, and full compensation required by the contract is not paid employees, an amount representing the underpayment shall be withheld similarly to item 9b (FSH 6326.3, item 6).

11. Reports of Violation or Underpayments. Reports will be made to the Secretary of Labor through the Office of Plant and Operations upon presentation through channels to the Washington Office (5 AR, app. 137).

\*-12. Owner-Operators of Trucks and Similar Construction Equipment. Bona fide owner-operators of trucks or other similar construction equipment who are independent contractors, are administratively exempt from the provisions of the Davis-Bacon and related acts. The certified payrolls for such bona fide owner-operators need not show hours worked nor rates paid, but only the notation "Owner-Operator." "Other similar equipment" includes only hauling equipment used in construction work but does not include bulldozers, scrapers, backhoes, cranes, and the like. -\*

6326.4 - Handbook on Contract Administration (To be written)

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6327 - PROCEDURES AND REQUIREMENTS FOR SPECIAL TYPES  
OF CONTRACTING6327.1 - Term Contracts

1. General. Where there is a recurrent need for supplies or services, it may be economical to execute a term contract in lieu of continued individual purchases. \*-No such term contract (except for public-utility service (FSH 6316.3)) shall be made for a period extending beyond the fiscal year in which executed unless the appropriation adequate for its fulfillment is available for both the fiscal year in which the contract was executed and the next succeeding fiscal year as well, except that in no case shall it be lawful to make contracts for stationery or other supplies for a longer term than 1 year from the time the contract is made (41 U.S.C. 11 and 13).-\* Bid invitations for term contracts should be stated in language that will prevent any doubt or uncertainty as to what is required during the period of the contract. Term contracts may be on the basis of definite quantity, an estimated quantity with variance clause, or on the basis of quantities as may be required.

In the act of June 30, 1932 (47 Stat. 473; 16 U.S.C. 557a), the Secretary of Agriculture is authorized in connection with the administration of the national forests to enter into contracts for the procurement of services, materials, and supplies for the ensuing fiscal year, prior to the passage of an appropriation therefor. Such contracts shall aliquot the cost of such service by fiscal years and shall not be binding on the United States as to that part for the ensuing year unless and until an appropriation applicable to the payment thereof is made. Also such contracts by their terms shall provide that the obligation of the United States is contingent upon the passage of an applicable appropriation and that no payment thereunder will be made until such appropriation becomes available for expenditure. The following wording is suggested for inclusion in the bid invitation:

Obligations under this contract after June 30 are conditioned upon passage of an appropriation by Congress. Therefore, payment for obligations after that date is contingent upon passage of the applicable appropriation.

Operation under the above contract does not relieve the purchasing officer of his responsibility to ascertain the availability of appropriation for payment before an order is issued.

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2. Definite Quantity. This is a contract wherein it is definitely known in advance that a certain quantity of supplies or services, as the case may be, is required during a certain period; such determination usually being based upon consistent past experience or a definitely planned program. The only difference between a contract of this kind and an ordinary contract is that a definite-quantity term contract runs for a specified length of time with successive deliveries according to schedules established by the Government, or ordered as the need arises, whereas a regular contract is usually for a one-time delivery only (or as scheduled by the bidder) within the time specified in the contract.

When the quantities specified in a definite-quantity term contract have been delivered, the contract shall be considered completed and no additional quantities shall be ordered under the contract. The Comptroller General has held: "The rule with respect to such matters \* \* \* is that when supplies in excess of a stated quantity are needed such excess should be separately contracted for in conformity with the provisions of section 3709, Revised Statutes" (11 Comp. Gen. 183). In this same decision the Comptroller held that: "The apparent probability that the additional supplies may be furnished at less expense by the original contractor because of being engaged upon the original work or otherwise is not controlling of the matter as to whether the provisions of section 3709 are for application. Whether the original contractor can furnish the supplies at less expense to the Government than any other contractor is possible of definite determination only by soliciting competitive bids as contemplated under said section." See also 5 Comptroller General 508.

3. Estimated Quantity With Variance Clause. More often than not it is impossible to determine in advance exactly what the needs will be over a stated period of time, yet the quantity required can be estimated with reasonable accuracy. The procedure to follow in such instances is to execute a term contract for an estimated quantity with a reasonable variance to the extent it can be definitely established. This estimated amount should be obtained from records of consumption during a prior similar period or, in the event this is an entirely new requirement, by carefully weighing the probable needs for the stated period (14 Comp. Gen. 446, 11 Comp. Gen. 183).

4. Source of Supply. When it is impossible to meet the need for certain supplies or services by either individual definite-quantity term contracts, or estimated-quantity-with-variance-clause term contracts, there may be executed term contracts for such quantities as may be required during a stated

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period. These contracts are sometimes called source-of-supply contracts. Contracts of this character should not be made, however, if the need can be met by one of the types of contracts mentioned above, for there is a possibility that bidders may quote higher prices than for definite-quantity contracts to protect themselves against possible contingencies.

a. Mutuality of Consideration. When advertising for bids on an indefinite-quantity term contract (source-of-supply) basis there must be included therein an estimate of the probable needs during the stated contract period (based upon the best information available at that time) so that all bidders will be on notice of the probable quantities to be required under the contract; also, appropriate language must be included to the effect that this estimate of needs is for information only and is not intended to imply that the estimate is an exact indication of the quantity that will be required. Further, to ensure mutuality of consideration so that there will exist a valid and legal contract, the invitation for bids and resultant contract must specifically provide that the Department of Agriculture activity or activities involved will procure all their needs during the stated contract period from the successful bidder (contractor) at the prices quoted and accepted by award of contract and that in consideration thereof the successful bidder (contractor) guarantees, by the submission of his bid in response thereto, to furnish all the contract materials that may be required by the activity or activities involved, during the stated contract period.

In Decision A-23680, dated January 7, 1929, unpublished, to the Secretary of War, the Comptroller General, in discussing a provision somewhat along the lines of that mentioned above, for insertion in advertisements for bids, said:

The language now proposed to be used in advertising for contracts for supplies, limiting the quantity only by the needs of the particular service over a given period, if incorporated by reference in such contracts, would appear to obviate certain of the objections to contracting for indefinite quantities. The provision that 'statements as to quantity listed in the schedules are given for information only, and will not relieve the War Department of its obligation to order from contractors all supplies that may, in the judgment of the ordering officers, be needed, ' appears sufficiently definite to obligate the Government to order supplies of the character contracted for exclusively from the particular contractor to the limit of the good faith needs of the service concerned, and thus to

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provide the requisite mutuality of consideration to bring such contracts within the principle of *United States v. Purcel Envelope Company*, 249 U.S. 313, as distinguished by the Supreme Court of the United States in *Willard Sutherland & Company v. United States*, 262 U.S. 489 \* \* \*.

b. Application of Estimated Quantities to Award Evaluation. If the invitation for bids on a source-of-supply contract basis includes a single item only, or there is more than one item but award is to be made by items, the low bidder(s) is ascertained by a comparison of the unit prices. However, it is sometimes necessary for efficient operation of a contract to stipulate in the invitation for bids that award will be made on "all or none" basis, that is, award will be made to one bidder for all items. Under these conditions, the invitation for bids should also prescribe the basis of award, that is, how the low bidder will be determined. This may be accomplished by including a provision to the effect that award will be determined by evaluating the various unit prices quoted with the estimate of needs shown in the advertisement. This is done by multiplying the unit prices quoted by such bidder by the estimate of the respective items as shown in the advertisement and then totaling the items for each bidder; this will give the estimated total cost that will decide which bidder will receive the award if otherwise satisfactory.

5. \*- Approximate Quantities (FSH 6322.34, item 4b)-\*

6327.2 - Cost-Reimbursement and/or Incentive-Type Contracts

1. Definition

a. Cost-Reimbursement Contract. This type of contract provides for payment to the contractor of all his costs for performing the contract. The contract defines allowable costs and usually establishes an estimate of the total cost.

b. Cost-Plus-Fixed-Fee Contract. This is a cost reimbursement contract which provides for payment of a fixed fee in addition to allowable costs. The fixed fee does not vary with the actual cost of the contract except as it may be adjusted as a result of a subsequent change in the contract.



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\*-c. Cost Plus Incentive Fee Contract. This is a cost reimbursement contract with provision for a fee which is adjusted by formula in accordance with the relationship which total allowable costs bear to target costs. The provision for increase or decrease in the fee is designed as an incentive to the contractor to increase the efficiency of the performance, for example, as the final cost is reduced below the target cost, the fee increases proportionately.

d. Cost Plus Percentage of Cost Contract. This is a cost reimbursement type contract with provision for payment of a fee based on a percentage of the allowable contract costs. The policy of the Department and section 304(b) of the Federal Property and Administrative Services Act of 1949, as amended, prohibits the use of this type of contract.

2. Limitations. In the case of a cost-plus-fixed-fee contract, the fee shall not exceed 10 percent of the estimated cost of the contract, exclusive of the fee, as determined by the contracting officer at the time of entering into the contract, except that for any such contract for experimental, developmental, or research work, a fee not in excess of 15 percent of such estimated cost is authorized. The contract price for architectural or engineering services cannot exceed 6 percent of the estimated cost of construction of any public works or utility project (FSH 6316.3, item b; FSH 6313.14d, item 3c).

3. Authorization. Neither a cost nor a cost-plus-fixed-fee contract shall be used until findings are submitted to the Washington office for approval of the Director of Plant and Operations and determination is made by him, in accordance with section 304(b) of the act, that such method of contracting is likely to be less costly than other methods or that it is impractical to secure property or services of the kind or quality required without the use of this type of contract.

4. Contract Provisions. All cost and cost-plus-fixed-fee contracts shall provide for advance notification by the contractor to the contracting officer of any subcontract thereunder on a cost-plus-fixed-fee basis and of any fixed price subcontract or purchase order which exceeds in dollar amount either \$25,000 or 5 percent of the total estimated cost of the prime contract. The contract shall provide that the Government shall have the right to inspect the plans and to audit the books and records of any contractor or subcontractor engaged in the performance of a cost or cost-plus-fixed-fee contract. -\*

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6327.3 - \*-Small Business Set-Aside Contracts-\*

1. Purpose. It is the purpose of this code to establish policies and procedures for setting aside contracts for award exclusively to small business. See FSH 6322.1 for definition of small business.

2. Policy. It is the policy of the Government that a fair proportion of its total purchases and contracts for supplies, property, maintenance, repair and construction, services, and research and development shall be placed with small-business concerns. In order to conduct a uniform cooperative program of action for carrying out this Government policy, units and the Small Business Administration (SBA) shall freely interchange ideas and information, including statistical data, at all levels, relating to programs for limiting suitable procurements to small-business concerns; and make maximum use of the capacity of small firms in such programs in order to accomplish the purpose of this policy.

3. Authority. The Small Business Act, as amended by Public Law 85-536, provides that the Government should aid, counsel, assist, and protect, insofar as is possible, the interest of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts for property and services, including, but not limited to, contracts for maintenance, repair, and construction, be placed with small-business enterprises, and to maintain and strengthen the overall economy of the Nation. Section 15 of the Small Business Act provides that small-business concerns shall receive any award or contract, or any part thereof, which is determined by SBA and the contracting officer concerned to be in the interest of (1) maintaining or mobilizing the Nation's full productive capacity, (2) war or national-defense programs, or (3) insuring that a fair proportion of the total purchases and contracts for property and services for the Government is placed with small-business concerns.

4. SBA Representatives. SBA may assign one or more representatives on a full-time or part-time basis to any procurement agency having a small-business set-aside program for the purpose of carrying out SBA responsibilities under the Small Business Act. SBA representatives will comply with directives concerning the conduct of procurement personnel and instructions concerning release of procurement information. Appropriate desk space and telephone facilities will be provided by contracting officers for SBA representatives assigned.

5. Screening of Procurements. SBA representatives when properly authorized (and cleared for security where classified procurements are to be screened) shall be afforded an opportunity to

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review all proposed procurements and requirements, and make recommendations concerning them, including proposals that they be wholly or partly set aside for small-business concerns. SBA representatives shall be afforded an opportunity to examine existing bidders' mailing lists and to secure the inclusion of additional small-business concerns on such lists. To facilitate the participation of additional small-business sources, pertinent procurement information, such as drawings and specifications, shall be furnished SBA by the contracting officer upon request, and SBA will be afforded an opportunity to recommend, within a reasonable period of time, consistent with urgency of the requirement, names of small-business concerns to be afforded an opportunity to participate in current procurements.

6. Initiating Set-Asides for Small Business. Any procurement, or an appropriate part thereof, whether classified or unclassified, shall be set aside for the exclusive participation of small-business concerns when such action is jointly determined by SBA and the contracting procurement unit to be in the interest of (1) maintaining or mobilizing the Nation's full productive capacity, or (2) war or national-defense programs, or (3) insuring that a fair proportion of the total purchases and contracts for property and services for the Government is placed with small-business concerns. These determinations may be made for individual items or for classes of items. Generally, SBA representatives will initiate recommended small-business set-aside action.

7. Review of SBA Set-Aside Proposals. When an SBA representative has recommended in writing that a procurement, or a portion thereof, be set aside for small business, the contracting officer (or other designated representative) of the contracting procurement unit shall act according to one of the following:

- a. Concur in the recommendation.
- b. Disapprove the recommendation, stating in writing his reasons for disapproval. (The SBA representative shall be allowed 2 working days to appeal any such disapproval to the Director of the Division of Administrative Services. Whenever

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SBA and the Director fail to agree, the matter will be submitted by the Administrator of SBA to the Secretary for final determination.)

Contracting officers shall not consider any one of the following factors as constituting a valid reason for disapproving a set-aside recommended by an SBA representative:

- a. A large percentage of previous procurements of the item in question has been placed with small-business concerns.
- b. The item to be purchased is on a planned procurement list or under a production allocation program.
- c. The item to be purchased is on a qualified-product list, except that a total set-aside shall not be authorized when the products of one or more large businesses are on the qualified-product list unless it has been confirmed that none of such large businesses desires to participate in the procurement.
- d. A period of less than 30 days from date of issuance of invitations for bids or requests for proposals is prescribed for the submission of proposals, except in cases of true public exigency.

### 8. Total Set-Asides

a. Supplies. The entire procurement shall be set aside for exclusive small-business participation when there is a reasonable expectation that bids or proposals will be obtained from a sufficient number of responsible small-business concerns so that awards will be made at reasonable prices.

b. Construction or Services. Contracts for construction or services shall be subject to set-aside for exclusive award to small-business concerns except under circumstances where (1) the procurement officer has reasonably definite information that a large-business concern is by reason of special circumstances in a favorable bidding position so that a substantially lower bid from his concern is to be expected, or (2) it can reasonably be expected that large business may be the only source of acceptable bids.

c. Notices. Each invitation for bids or request for proposals shall contain substantially the following notice:

#### NOTICE OF TOTAL SMALL-BUSINESS SET-ASIDE

Bid or proposals under this procurement are solicited from small-business concerns only and this procurement is to be awarded only to one or more small-business concerns. This action is based on a determination by the contracting officer and the Small Business Administration under the



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authority of section 15 of the Small Business Act. A small-business concern is any firm which meets the criteria established by title 13, chapter I, part 121, of the Code of Federal Regulations. Bids or proposals received from firms which are not small-business concerns will be considered nonresponsive.

9. Partial Set-Asides. Since procurements are rarely of a size where partial set-asides are feasible, procedures therefor are not stated herein. If necessary, the procedures therefor may be obtained from 41 CFR subpart 1-1.7.

10. SBA Certificates of Competency. SBA has statutory authority to certify the competence of any small-business concern as to capacity and credit. \*-As used herein, the term "capacity" means the overall ability of the prospective contractor to meet the quality, quantity, and time requirements of the contract, -\* Agencies shall accept SBA Certificates of Competency as conclusive as to capacity and credit. If a small-business concern has submitted an otherwise acceptable bid or proposal but has been determined by the contracting officer not to be responsible as to capacity or credit, and if the bid or proposal is to be rejected solely for this reason, (1) SBA shall be notified of the circumstances so as to permit it, if warranted, to process a Certificate of Competency; and (2) award shall be withheld, pending SBA action, up to 10 working days after SBA is so notified. \*-Where a bidder is determined not to be qualified for reasons other than capacity or credit, that is, lack of integrity, consistent record of default under prior contracts, questionable business practices, etc., the contracting officer has the responsibility for rejection without referral to SBA. (37 Comp. Gen. 676; B-138233, Feb. 24, 1959; B-139366, June 24, 1959.)-\*

This procedure is mandatory for all awards over \$5,000, except where the contracting officer certifies in writing that award must be made without delay and a statement justifying the action is signed by the contracting officer and placed in the contract file. To assist SBA in determining the capacity and credit of small-business concerns involved in a particular procurement, the contracting officer shall make available to SBA, at the time of notification, all available pertinent data, including technical and financial information, with respect to the small-business concern involved.

11. Documentation. The contract file shall include the request from the SBA representative for set-aside action, the written concurrence of the contracting officer, and a statement on the certificate of award that the contract is entered into under authority of section 15 of the Small Business Act of 1958.



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12. Small Business Act as It Applies to Field Use. The Small Business Administration has advised its field offices of this agreement and asked that they contact field offices of Department agencies. Agreement provides that the Small Business Administration will be afforded the opportunity to screen all procurement requests at major procurement offices. It does not apply to experiment stations or forest supervisors' offices. Set-aside arrangements will be entered into only by regional offices in cities where Small Business Administration offices are located.

6327.4 - Cooperative Agreements

1. Definition and Application. Some so-called cooperative agreements are in fact contracts and as such will require the applicable labor stipulations. Merely designating a document as a cooperative agreement is not significant. Under date of June 11, 1951, the Associate Solicitor defined a cooperative agreement as "in general \* \* \* an undertaking between two or more parties sharing on a mutual basis the responsibility for the accomplishment of a common project" and in which there is a "mutuality of interest and a union of effort toward the same end." Cooperative agreements which clearly contain these elements need not include the stipulations regarding convict labor: the Eight-Hour Law, the Copeland Act (Anti-Kickback), or the Davis-Bacon Act; however, the stipulation on nondiscrimination in employment might be required as indicated below.

2. Inclusion of Nondiscrimination Clause. The nondiscrimination clause should be included in cooperative agreements when a cash payment is to be made to the cooperator for all or part of the costs for a set fee for specific work and the cooperator agrees that he will perform such work.

All doubtful cases should be decided in favor of inclusion of the clause. When trouble is encountered by inclusion of the clause, the agreement should be submitted to the \*-chief, division of fiscal control and the chief, branch of administrative services-\* for further consideration and reference to the Office of the General Counsel if necessary.

6327.5 - \*-Airport-Use Agreements

6327.51 - General. In every situation wherein the Forest Service or its contractors operate from airports which are being maintained by the owners to standards intended only for smaller and/or lighter weight aircraft than to be used by the Forest Service, consideration must be given to the possible damage which the heavy aircraft may-\*

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- \*-cause to the runways and taxiways. Damages caused by Forest Service owned or contracted aircraft to such airports, when not compensated by landing fees or similar use charge, may result in damage claims or prohibition against further use.

There follows a sample airport-use agreement which can be entered into with owners of airports to provide for Forest Service use of runways and taxiways and the means for the Forest Service performing or paying for repairs necessitated by such use. This agreement is to be utilized only where use is free or at least nominal. Special charges to the Forest Service for tiedown space, hangar rents, or for similar specific purposes have no effect on use of this agreement. Airports may not, however, charge other than a nominal landing fee or use fee to either the Forest Service or its contractors during any period this agreement is in effect.

Forest supervisors and others who may have need to use the following agreement should carefully note the interpretation and instructions for use in FSH 6327.53. Significant changes should not be made in the agreement without prior approval of the regional forester.

6327.52 - Sample Agreement

<p style="text-align: center;">AGREEMENT FOR USE OF _____ AIRPORT</p> <p style="text-align: center;">RUNWAYS AND TAXIWAYS</p> <p>This Agreement, made and entered into this _____ day of _____, 1961, by and between _____, hereinafter referred to as Airport Authority, and the Forest Service, U.S. Department of Agriculture, hereinafter referred to as Forest Service, Witnesseth,</p> <p>The parties hereto for the considerations hereinafter mentioned covenant and agree as follows:</p> <p>1. As an agency of _____ County, the Airport Authority is concerned with and interested in management and protection of forested areas in and adjacent to the County, and in consideration of benefits derived from Forest Service administration and protection of national-forest lands, does hereby authorize the Forest Service to make unrestricted use of aircraft taxiways and takeoff and landing areas now in place or to be constructed within the _____ Airport, located in Sec. _____, T. _____, R. _____, approximately _____ miles _____ of the town of _____, _____ County,</p>
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- \*- 2. The use authorized herein is by aircraft of gross weight heavier than otherwise authorized upon the \_\_\_\_\_ Airport, and such use is authorized exclusively to the Forest Service, Provided (1) nothing herein contained shall restrict or otherwise affect use by aircraft which are within the load capacity of the airport, or emergency use by any aircraft; (2) in the event of emergency landing of any aircraft heavier than the allowable gross weight stated in clause 7 hereof the Forest Service will be immediately notified so that a condition survey can be made to establish any damage or extraordinary wear and tear caused by such emergency landing, use and takeoff for which the Forest Service is not responsible; and (3) pre-arrangements may be made between the parties hereto for recurrent use by heavy aircraft not operated by or for the Forest Service and which arrangements include method of determining damage and extraordinary wear and the financing of repairs.
3. The Forest Service shall not assign this Agreement in any event, but it is agreed and understood that the exercise of permission herein granted extends to aircraft owned, borrowed, leased, rented or otherwise contracted to or being operated for the benefit of the Forest Service.
4. The period of this Agreement begins \_\_\_\_\_ and ends \_\_\_\_\_. This Agreement may, at the option of the Forest Service, be renewed from year to year, upon notice being given in writing to the Airport Authority, and provided further, that no renewal thereof shall extend this Agreement beyond \_\_\_\_\_.
5. The Airport Authority agrees that the Forest Service may at its option and for the benefit of its own operations place runways and/or taxiways in such temporary condition of strength or dimension that they will permit landings and takeoff of aircraft of size and weights greater than anticipated for normal use of this airport: Provided, That prior to beginning any such work the Forest Service will consult with the Airport Authority and comply with State and Federal regulations concerning use or restricted use of airports, shutdown, landing hazards, and any other factor affecting use or safety.
6. The Airport Authority agrees that the Forest Service may perform repair of the runways and taxiways over and above, or at more frequent intervals than maintenance and repair normally accomplished by the Airport Authority.
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- \*- 7. At the beginning of each season or period of use by the Forest Service, and at other times as may be necessary, the Forest Service will make a condition survey of the airport runways and taxiways. At the end of the use season, the Forest Service will again make a condition survey of the airport runways and taxiways. These surveys will be used as a basis for determining maintenance requirements and any additional repair necessitated by the Forest Service having used aircraft heavier than the runways and taxiways were constructed and maintained to carry. In making such surveys, the Forest Service will consult with the Airport Authority and furnish a copy of the written report of the surveys to the Airport Authority. The surveys will be made for the purpose of determining the repairs made necessary by the extraordinary wear and tear caused to the runways and taxiways by aircraft used by the Forest Service in its operations, which aircraft are heavier than the load capacity to which the runways and taxiways were constructed and maintained to carry, determined by the Airport Authority and mutually agreed to be \_\_\_\_\_ lbs. gross weight (loaded) per aircraft.
8. The Forest Service agrees that it will repair or cause to be repaired damages or extraordinary wear and tear attributable to the use of aircraft heavier than the airport was constructed and maintained for as provided above. Determination of the extent of repairs will be made by the Forest Service based on the condition surveys provided for in clause 7 hereof.
9. Nothing contained in this Agreement shall be construed to create any obligation on the part of the Forest Service to repair any damages caused by aircraft of gross weight for which the airport runways and taxiways are constructed and maintained.
10. Any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the Forest Supervisor, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Airport Authority. Within 30 days from the date of such copy, the Airport Authority may appeal the decision to the head of the Department and the decision of the head of the Department or his duly authorized representative shall, unless determined by a court of competent jurisdiction to have been fraudulent, arbitrary, capricious, or so grossly erroneous
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- \*- as necessarily to imply bad faith, be final and conclusive: Provided, That if no such appeal to the head of the Department is taken, the decision of the Forest Supervisor shall be final and conclusive. In connection with any appeal proceeding under this clause, the Airport Authority shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Airport Authority shall proceed diligently with the performance of this Agreement and in accordance with the Forest Supervisor's decision.
11. No Member of Congress, or resident Commissioner shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

6327.53 - Interpretation and Instructions Applicable to Agreement

Clause 1. It is important to note this is a use agreement and not a lease of the areas to be used. If the Airport Authority requires some monetary consideration, an additional clause should be added as follows: "The Forest Service shall pay the Airport Authority for the use privilege herein authorized at the rate of \$ \_\_\_\_\_ per \_\_\_\_\_. " In addition, clause 4 would be changed to read "\* \* \* be renewed from year to year at a rental of \$ \_\_\_\_\_ per \_\_\_\_\_ provided notice \* \* \*." Any fee charged would have to be sufficiently nominal to be of no consequence to the costs of improvements or repair provided for in clauses 5 and 8.

Clause 2. This is a required clause.

Clause 3. This is a required clause. Purpose is to include all aircraft operated by or for Forest Service operations. It is the intent that the Forest Service will pay for repairs necessitated by its operations.

Clause 4. The initial term is for a fiscal year or the remaining part thereof from date of execution, except that if the agreement is entered into late in the fiscal year and there is no monetary consideration, the initial term may be from date of execution to June 30 of the next fiscal year (as from June 10, 1961, to June 30, 1962). A maximum renewal period must be stated because no provision is made for termination by the Airport Authority. The maximum renewal period should normally be not less than 5 years and it may be desirable to propose 10-\*



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\*-or more years. If runways or taxiways are improved by the Forest Service, or there is extensive repair which will likely have a use period beyond the current season, the maximum period of renewal should at least extend over the anticipated use life of the improvements or repair.

Clause 5. This clause gives the Forest Service the right to make improvements to the runways and taxiways, but imposes no obligation to do so. Basis of any such improvement must be requirement solely for the benefit of Forest Service aerial operations. This clause is not mandatory to the Agreement and may be omitted.

Clause 6. This clause is required. It provides the authority to the Forest Service to enter upon the airport property and perform repair of runways and taxiways.

Clause 7. This clause is required. It establishes the means whereby there can be determination as to extraordinary wear and tear caused by Forest Service air operations. Determination of extent of repair to be done at the expense of the Forest Service must be by the Forest Service. The surveys are to be well documented as they form the basis upon which Forest Service funds may be expended for repair of privately owned improvements. The survey reports shall be a signed statement, with a copy furnished to the Airport Authority.

Clause 8. This paragraph states what the Forest Service will do. Obligation is incurred when survey determination establishes Forest Service responsibility, and care must be taken to ensure estimates for the repair work so necessitated being included in project obligations.

Accomplishment of work must be by means the same as if the airport were Forest Service owned. Repair work may be done in any of the following ways:

- a. By Forest Service force account.
- b. By contract issued under Forest Service procurement regulations. The contractor may be the County or Airport Authority.
- c. By cooperative agreement. It is probable that in some cases the Airport Authority will have other repair or maintenance work to be done concurrent with that which the Forest Service is doing. From both cost and work accomplishment standpoints it may be best that one of the parties perform the entire job, or award and administer-\*

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\*-contract for the entire job. The Forest Service may include additional work requested and wholly financed by the Airport Authority by entering into a cooperative agreement under provisions of the Granger-Thye Act. If the Airport Authority is to do the work by force account or contract awarded from competitive bids, a memorandum agreement should be entered into stating that the Forest Service will reimburse the Airport Authority for its share of costs upon completion of the repair work. In such arrangements the Forest Service share may be advanced to the Airport Authority or may be paid in installments as the work progresses. In each such agreement, the maximum amount which may be reimbursed will be stated; this amount in no event shall exceed the sum fixed by the condition survey.

d. By cash settlement to the Airport Authority based upon estimated cost of repairs necessitated by Forest Service operations as specified in the Agreement. Provision for cash settlement is not to be separately stated in the Agreement because this method gives no assurance that repairs will be promptly made. This method is of advantage when the Airport Authority is to make major improvements to the same airport and in which Forest Service repair responsibility costs cannot be readily separated. The availability of the airport for continued use by the Forest Service should be ensured before any cash settlement arrangement is made. Prior approval by the regional forester is required for any cash settlement arrangement. Any sum so paid shall be in full satisfaction of any demands for repair, and the Airport Authority shall give an appropriate release to the Forest Service.

In any situation where cost of repair of airport damage is estimated to be in excess of \$15,000, the regional forester shall review the survey reports and determination of work needed in advance of commencement of such work. He may request advice and assistance from the FAA airport engineer if needed.

Clause 9. This is a required clause. There must be a clear understanding that repair work which the Forest Service will do must be caused by aircraft which are heavier than the load capacity for which the airport involved is being maintained. Airports generally permit free use by aircraft within the load capacity, or have a landing fee arrangement.

There may be circumstances where heavy aircraft, other than those owned or contracted to the Forest Service, will occasionally use the airport. In any such situation, repair costs must be prorated between Forest Service use and the use by other-\*

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\*-aircraft. Proration may be on basis of number of landings, or there may be some other more equitable basis such as the sums of gross weight of each aircraft multiplied by number of landings of that aircraft.

In circumstances where heavy aircraft operated by or under contract to another Federal agency, or a State agency is using the same airport, the airport-use agreement should preferably be a joint arrangement between all parties involved. The sample agreement should be modified to identify the using agencies, establish the obligations of each, and provide the basis of distribution of damage costs.

Clause 10. This clause is required.

Clause 11. This clause is required.

6327.6 - Air-Operations Contracts (To be written)-\*

6328 - CONTRACT DISPUTES AND APPEALS

6328.1 - Policy. It is the policy of the Department to handle questions of fact and disputes thereon arising under contracts in a fair, considerate, and expeditious manner, so as to ensure prompt and equitable decisions. The rendering of such decisions shall be performed in accordance with the procedures herein, recognizing that their application requires the utmost in tact and sound judgment. It is emphasized that by the inclusion of the standard dispute clause in a contract, the parties have agreed upon a procedure to be followed when disagreements arise under a contract, and failure to pursue these administrative procedures and exhaust all the remedies so provided may prejudice the rights of the contractor or the Government otherwise to enforce such claims in the courts.

6328.2 - Definitions

1. Question of Fact. The general provisions of SF-32 and SF-23A specifically indicate several questions as being questions of fact. In general terms, any question which involves the submission of evidence to enable a decision is a question of fact.

2. Question of Law. Any question which does not require the introduction of evidence to form a decision is a question of law. For instance, the interpretation of the intent or meaning of contract provisions involves questions of law whereas determinations as to whether the contractor has complied with contract provisions usually involve the introduction of evidence and thus becomes a question of fact.

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6328.3 - Determination of Contract Questions. It is the responsibility of the contracting officer to resolve a variety of questions of fact, which may arise either before or after final payment, in such problem areas as price adjustments, change in delivery time, rejection of materials, or similar matters in connection with the administration of contract provisions. A tactful and cooperative approach by the contracting officer to the contractor's problem will do much to avoid formal protests and claims, as, in the majority of cases, a satisfactory agreement can be reached if the contractor has been fully apprised of the specific contract provisions pertinent to the questions involved and the right of the contract and the Government with respect thereto. When questions are settled in this manner, the agreement should be documented for record purposes in the form of a letter or memorandum of agreement. If, however, the contractor is dissatisfied with explanations or determinations given and an agreement cannot be successfully negotiated, he should be referred to the contract provisions regarding disputes and advised to present his claim in writing to the contracting officer. Decisions will be rendered as follows.

Except as may be otherwise specifically provided in a contract, any dispute concerning a question of fact arising under a contract which is not disposed of by agreement shall be decided by the contracting

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officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the contractor. Such decisions shall be made by means of a findings of fact in the format prescribed in FSH 6328.4. See FSH 6328.9 concerning questions of law. Before making the findings of fact, the contracting officer shall conduct such investigation as may be necessary to ascertain the facts and shall appropriately document the findings. The statutory provisions as to the finality of such decisions are treated in 5 AR 221 as follows:

When standard forms are not utilized, the disputes clause must be consistent with the statute (41 U.S.C. 321-322) which provides for judicial review of decisions made by the head of the department in a dispute involving questions of fact if it is alleged such decision is fraudulent, capricious, arbitrary, or so grossly erroneous as to imply bad faith, or is not supported by substantial evidence; and further provides that no Government contract shall contain a provision making final on a question of law the decision of any administrative official.

The contracting officer should try to resolve any disputes in a just and equitable manner in order to avoid an appeal. The advice and assistance of the Office of the General Counsel should be obtained in working up evidence and facts in questions of and development of pertinent information in questions of law (FSH 6328.9). When the question under consideration is complicated or the contracting officer has any reason to believe that the contractor will appeal, he should refer the case, together with his findings of fact, to the Washington office for review prior to furnishing the contractor with a copy of the findings of fact.

#### 6328.4 - Findings of Fact

1. Format. The general form to be followed in preparing findings of fact is outlined below. When questions of fact are in dispute, each question or issue raised in the contractor's claim should be separately considered in the findings of fact and a decision made on each individual issue before a summary decision is reached on the overall claim. It is extremely important that there be no misunderstanding as to the specific points at issue, and when the claim is not clear to the contracting officer, he should request a clarification of the questionable issue prior to his analysis of the claim. If findings of fact are required to cover excusable delays, extensions of time, or other matters not involving a dispute, the format may be modified to suit the individual case.



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Findings of Fact

In connection with claim of (company name and address)  
 under Contract No. \_\_\_\_\_  
 for \$ \_\_\_\_\_  
 \_\_\_\_\_  
 (brief statement of claim)

a. Scope of Contract. Cite contract number, location of work or item description, contract price, delivery schedule, purpose of contract, and other general contract information.

b. Contractor's Claim. The claim of the contractor should be restated here in the form of each separate issue raised. The exact wording of the claim should be used wherever feasible and indicated as a direct quote. Each issue should be identified by a subparagraph letter or number, that is:

The Contractor Claims:

- (1) That he is entitled to . . .  
. . . on the basis of the following evi-  
dence . . .  
1. etc.
- (2) That delays were beyond his control  
because . . .  
1.  
2.

c. Analysis of Claim. The contracting officer should confine his analysis (comparison of facts with contract provisions, conclusions, and decision) to each individual question raised in the contractor's claim, as indicated in item b above. Each step in the analysis should be paragraphed for purposes of clarity and ease of reference, that is:

- (1) The question in dispute (copy item (1) under item b above).
- (2) Contract provisions relating to the question.
- (3) Facts of performance--state each fact separately, referring to or summarizing the evidence supporting the facts.

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(4) Comparison of facts with contract provisions and contractor's claim.

(5) Conclusion and decision.

All additional questions shall be treated as outlined above.

d. Summation and Decision. When more than one question or issue is involved, summarize the decisions reached on each separate question or issue as necessary to provide an overall decision on the total claim. \*-Add the following statement:

This is the final decision of the contracting officer. It is subject to appeal in accordance with the Disputes Clause of the contract. Appeal may be effected by written notice thereof addressed to the Secretary and furnished to the contracting officer within 30 days from the date of receipt hereof. -\*

\_\_\_\_\_  
Contracting Officer

2. Record of Evidence To Be Maintained. The contracting officer shall maintain a complete record of the evidence upon which his decision is based.

### 6328.5 - Appeals

1. Eligible Contractors. Appeals may be taken from decisions of contracting officers involving disputed questions of fact under contracts for (1) the construction, alteration, or repair of public buildings or works; or (2) the purchase of administrative supplies, equipment, materials, or services, the terms of which provide that such appeals may be made to the head of the Department or his duly authorized representative. Such an appeal shall be taken by filing a notice of appeal with the Secretary or the contracting officer within the time prescribed in the contract.

2. Contents of Notice of Appeal. The notice of appeal shall be in writing but need not follow any prescribed form. It may be in the form of a letter. It should indicate the decision from which the appeal is being taken, the date of the decision, and the contract number. The notice of appeal should state whether the contractor desires to appear or be represented at a hearing before the Board of Contract Appeals (FSH 6328.6), and should contain a request that such a hearing be held.

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3. Transmittal of Notice of Appeal. Upon receipt of the notice of appeal, the contracting officer will endorse the date of its receipt thereon and will immediately forward it to the Washington office for transmittal to the Director of Plant and Operations for Board of Contract Appeals action.

4. Causes of Disputes and Appeals. The most common causes of disputes and appeals are as follows:

- a. Ambiguities and conflicting language in specifications.
- b. Specifications containing language calculated to cast upon the contractor the risk of large contingencies.
- c. Inaccurate log of subsurface borings and investigations.
- d. Failure to furnish to the Government all information available on subsurface conditions.
- e. Instructions given to contractors by personnel other than the contracting officer or his representatives, and a failure to define those persons who are duly authorized representatives of the contracting officer, and in what respects.
- f. Oral instructions not confirmed in writing.
- g. Indecision and delays in making final determinations concerning proposed changes.
- h. Unjustified waivers of the time limitations for the filing of claims.
- i. Procedures which permit a final decision prior to marshaling of all the facts and a thorough study thereof, that is, hasty decisions. Findings of fact must be thorough before an adequate final decision can be made.

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\*-j. The failure of contracting officers to confer personally with claimants to the end that the contractor is bound to know (1) that the contracting officer is thoroughly conversant with all of the facts, (2) that the contracting officer, with an open mind, has made a bona fide effort to understand the contractor's position, (3) that the Government's position is meritorious and based upon substantial evidence, and (4) that the Government's action is not arbitrary, capricious, or so grossly erroneous as to imply bad faith.

As will be noted, these examples start with initial drafting and review of specifications from which stem items a, b, c, and d, and continue through the administration of contracts to final decisions as indicated by items i and j.

6328.6 - Board of \* \* \* Contract Appeals

1. Appointment. The Board of Contract Appeals shall be designated by the Administrative Assistant Secretary for each case and be composed of 5 members as follows: 1 member from each of the Offices of the General Counsel, Plant and Operations, and Budget and Finance, and 2 members from the Department experienced in the subject matter of the work involved in the contract. No member shall have been directly involved in the letting or administration of the contract. The Director of Plant and Operations shall, in consultation with the agencies involved, determine availability of employees best qualified to serve on the Board and advise the Administrative Assistant Secretary thereof with his recommendations for composition of the Board.

2. Notice to Parties. Upon receipt of an appeal from a contracting officer's decision, the Director of Plant and Operations shall (a) arrange for appointment of the Board as provided in 1 above, (b) notify the contracting officer of such appeal and require him to forward the necessary copies of his decision, finding of fact, supporting data, correspondence, and other data relevant to the dispute, (c) refer the appeal together with all pertinent information to the Board of Contract Appeals, and (d) notify the contractor that his appeal has been received and, if he has not requested a hearing, that he may (1) have one before the Board upon request within a specified time, (2) submit the case on written argument and evidence, or (3) have the case decided on the basis of record. The contractor shall be furnished at the same time a copy of these regulations and such further instructions as may be appropriate.

3. Quorum. Three members, one of whom shall be subject-matter specialist, shall constitute a quorum.

4. Function of the Board. The Board shall consider and determine contract appeals in accordance with these regulations. In-\*

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\*-addition to deciding questions of fact, the Board may in its discretion hear, consider, and decide related questions of law necessary for the complete adjudication of the issues in dispute, although any decision on a question of law cannot be final.

6328.7 - Contract-Appeal Hearings

1. Request for Hearing by Contracting Officer. If a hearing is not requested by the contractor, the contracting officer may request that a hearing be held by forwarding such a request in writing to the Board.

2. Consideration by Board Without Hearing. If a hearing is not requested by the contractor or by the contracting officer, the Board will proceed to a determination on the basis of the record then before it, together with such a brief as the contractor may desire to submit and a reply brief submitted by the contracting officer. The Board will instruct the parties with respect to the time within which such briefs must be submitted and served upon the other parties.

3. Hearings: Where Held. Hearings will be held at the Department of Agriculture, Washington, D. C., unless another place is approved by the Director of the Office of Plant and Operations.

4. Notice of Hearings. The contractor and the representatives of the Government shall be given at least 20 days' notice in writing of the time and place of any hearing scheduled by the Board. If it finds that the time fixed is inconvenient to the parties, the Board may reschedule the time.

5. Scope of Procedures. In the written appeal or in other papers submitted to the Board or in any event prior to the time of the hearing, the contractor shall specify the portions of the findings of the contracting officer from which the appeal is taken and the reasons why the findings or the decision are deemed erroneous. Independent finding of fact will be made by the Board, although the findings of fact of the contracting officer may be adopted by the Board in whole or in part.

6. Absence of Parties. In the event of the unexcused absence of a party at the time and place set for a hearing, the hearing will proceed and the appeal will be deemed as having been submitted without oral testimony or argument on behalf of that party.

7. Prehearing Arrangements. The Board may direct the parties to appear at a specified time and place for a conference to consider or otherwise provide for (a) simplification of issues, (b) possibility of obtaining stipulations or admissions of fact and of documents, and (c) such other matters as may facilitate the disposition of the appeal. -\*



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**\*-8. Conduct of Hearings.** The hearings before the Board will be informal, with no fixed form of procedure. Findings of fact in the contract officer's decision which are not contested may be accepted by the Board without further proof. Although the Board is entitled to the entire record to aid it in the consideration of the case, on facts in dispute the Board may not rely on any evidence not presented in hearings to support any findings or determinations thereon except that which may be officially noticed. Either the contractor or the representatives of the Government may introduce evidence pertinent to the basic issues. The burden of establishing errors or omissions in the decision of the contracting officer shall rest on the party asserting the error or omission. Subject to the exercise of a reasonable discretion under all the circumstances of the particular case, the Board may limit or otherwise control the issues to be considered on the appeal and the extent of the evidence, testimony, or argument presented. A verbatim reporting and transcription of the testimony shall be made, the costs thereof to be borne by the unit involved in the contract dispute. In addition, the following general rules will apply.

a. The parties may be represented at a hearing by any authorized person meeting the requirements of 1 AR 441, which are as follows.

In any proceeding before the Department, the parties may appear in person or by counsel or other representative. Persons who appear as counsel or in a representative capacity at a hearing must conform to the standards of ethical conduct required of practitioners before the courts of the United States. Whenever the Secretary finds, after notices and opportunity for hearing, that a person who is acting or has acted as counsel or representative for another person in any proceeding before the Department is guilty of unethical conduct, he will order that such person be precluded from acting as counsel or representative in any proceeding before the Department.

b. The parties may present to the Board a signed stipulation setting forth any agreed facts or stating the matters in dispute.

c. In addition to the presentation of witnesses and documentary evidence, the parties may, in the discretion of the Board and upon application in advance of the hearing and with notice to the opposing party, submit evidence by deposition based upon oral examination or written interrogatories or in such other form as the Board may approve.-\*

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\*-d. Witnesses before the Board may be required to testify under oath, and attention of the witness may be invited to 18 U. S. C. 287 and 1001, and any other appropriate provisions of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

e. All witnesses shall be subject to cross-examination, and also to examination by the Board.

f. On proof of authenticity, copies of papers, books, records, or documents will be accepted as evidence in lieu of the submission of the original documents where such submission is not practicable.

g. The weight to be given evidence presented in any particular form will be determined by the Board in the exercise of a reasonable discretion under the circumstances of the particular case.

h. Briefs may be submitted, either on request of the parties or of the Board, in accordance with instructions issued by the Board, which instructions shall require that copies be served upon the opposing parties, who shall have opportunity to present argument in rebuttal within a time limitation fixed by the Board.

6328.8 - Final Action of Board of Appeals

1. Findings and Recommendations. The Board will make specific findings of fact and conclusions disposing of the appeal. The chairman of the Board shall be responsible for the preparation and submission of the decision of the Board, which shall be signed by all members of the Board who concur therein. A copy of the findings, conclusions, and decision shall be submitted to the contracting officer, to the appellant, and to the Director of the Office of Plant and Operations.

2. Finality. The decision of the Board based upon the appeal record shall be final and conclusive and binding on the parties thereto, except as it may be subject to review as provided by law. A request for reconsideration may be made to the Board within 30 days from the date of the decision. Reconsideration of a decision which may include a hearing or rehearing may be granted or denied in the discretion of the Board.

6328.9 - Dispute Settlement; Procedures. This section deals with the definite procedures or channels to be followed in presentation of questions of law and questions of fact for settlement. The procedures to be followed under questions of fact is more fully covered under "Disputes" in SF-32 and -23A. It will be mandatory that-\*

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\*-the provisions outlined covering settlements concerning questions of fact be adhered to. The procedure will be briefly restated herein. Questions of law are not for decision by the contracting officer and will necessitate a different procedure for processing for payment.

1. Questions of Law

a. General. The contractor should be requested to present in writing to the contracting officer any point of issue concerning questions of law. The contracting officer should obtain the advice and assistance of the General Counsel in developing information for the presentation to the Comptroller General. Also, there may be occasions when the Washington office could provide the contracting officer with information on action taken by the Comptroller General in similar cases which might influence the contractor in not presenting a claim. The contracting officer should refer such cases to the Washington office. If any information is developed which indicates fairly conclusively that a claim would be disallowed, the contractor should be informed if possible in order to prevent a claim being submitted. -\*

b. Procedure for Making Submission. The contracting officer will furnish the following to the fiscal agent for submission to the Comptroller General for settlement:

(1) Original bid or a certified true and correct copy thereof.

(2) Original of contractor's statement of contention.

(3) Copies of all correspondence with the contractor having any bearing either directly or indirectly on the case.

(4) Contracting officer's resume of the case which should include all available information relevant thereto and in matters of interpretation, the intent of the provisions of the contract from the Government's viewpoint, and recommendations of contracting officer.

(5) Contractor's invoice covering amount alleged to be due.

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2. Questions of Fact. Definite procedures concerning questions of fact are outlined in SF-32 and -23A, and in subchapter 6328. The procedure outlined will be followed in all cases concerning questions of fact. The contractor's invoice will not be forwarded to the fiscal agent for payment until all disputes relating to questions of fact have been resolved in accordance with the provisions of the contract.

3. Questions Including Law and Fact. There may be questions wherein both questions of law and of fact are so interrelated that separation would not be desirable nor feasible to process through separate channels.

4. Procedure When Agreements or Contracts Do Not Include the "Disputes" Provision. Purchases or agreements are often entered into with contractors under open-market limitation and in exigencies, which do not include a provision for settlement of disputes. In the absence of such provision, claims which cannot be resolved should be processed through the fiscal agent concerning questions of law or of fact for presentation to the General Accounting Office (FSH 6542.2).

5. Patent Infringement Claims. The following arrangement whereby all claims of patent infringement may be handled uniformly has been worked out between the Department of Justice and other departments:

"Where there has been a notice of infringement of a patent (for example, where the Government has used a device alleged to infringe a patent, or where the Government has requested bids to purchase devices which are alleged to infringe a patent), a copy of the letter or notice of infringement should be promptly sent to the Patent Section of the Department of Justice. The other departments will then be asked if they received a like notice. Thereafter a conference should be held to prepare a uniform reply by the departments to such notices of infringement and to outline the Government defenses, including prior use, to locate Government witnesses and to collect and preserve records which might be used in the defense of the case.

"Where a contractor for the Government has received notice of infringement of a patent, such notice should likewise be promptly sent to the patent section of this department (Justice) for actions similar to those notices given directly to the Government. In actions against the contractors the departments involved should collect all contracts pertaining to the subject to determine whether or not they contain provisions whereby the Government has warranted the contractor against patent infringement or the contractor has warranted the Government against patent infringement."

All patent infringement cases should be forwarded promptly to the Chief's office for transmittal to the Department.

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### CHAPTER 6330 - SPECIFICATIONS, STANDARDS AND QUALIFIED-PRODUCT LISTS

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\* Abbreviations:

M - Manual

H - Handbook



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## TITLE 6300 - PROCUREMENT MANAGEMENT

CHAPTER 6330 - SPECIFICATIONS, STANDARDS, AND  
QUALIFIED-PRODUCT LISTS6331 - PURPOSE, POLICY, AND DEFINITIONS\*-6331.1 - Purpose (FSM)6331.2 - Policy (FSM)-\*6331.3 - Definitions

1. Specifications. A clear and accurate description of the technical requirements for a material, product, or service, including the procedure by which it will be determined that the requirements have been met. Specifications for items or materials also contain preservation, packaging, packing, and marking requirements.

a. Federal. A specification covering those materials, products, or services, used by or for potential use of two or more Federal agencies (at least one of which is a civil agency), or new items of potential general application, promulgated by the General Services Administration and mandatory for use by all Federal agencies.

b. Interim Federal. A potential Federal specification issued in interim form, for optional use by Federal agencies. Interim amendments to Federal specifications are included in this definition.

c. Military. A specification issued by the Department of Defense, used solely or predominantly by and mandatory on military activities. This definition includes both fully coordinated and limited-coordination military specifications.

d. Departmental. A specification developed and prepared by and of interest primarily to a particular Federal civil agency, but which may be used in procurement by other Federal agencies. Forest Service specifications are included in this category.

e. Bid Specifications. A specification written for local or nonrecurring use when no other specification is applicable or available. Most specifications for services will be bid specifications.

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2. Standard. A description which establishes engineering or technical limitations and applications for materials, processes, methods, design, drafting room and other engineering practices, or any related criteria deemed essential to achieve the highest practical degree of uniformity in materials or products, or interchangeability of parts used in those products; and which may be used in specifications, invitations for bids, proposals, and contracts.

a. Federal. A standard promulgated by the General Services Administration for mandatory use by all Federal agencies.

b. Interim Federal. A standard intended for final processing as a new or revised Federal standard, issued in interim form for optional use by Federal agencies.

c. Military. A standard issued by the Department of Defense, used solely or predominantly by and mandatory on military activities. This definition includes both fully coordinated and limited-coordination military standards.

d. Departmental. A standard developed and prepared by and of interest primarily to a particular Federal civil agency, but which may be used in procurement by other Federal agencies. Forest Service standards are included in this category.

3. Qualified-Product List. A list of products which have been tested by the designated qualifying activity and which meet the qualification test requirements of the applicable specification. Normally, a product must be qualified prior to award of a purchase contract.

a. Federal. A list of products qualified under the applicable Federal or interim Federal specification.

b. Military. A list of products qualified under the applicable military specification.

c. Departmental. A list of products qualified under the applicable departmental specification.

6332 - AVAILABILITY

6332.1 - Specifications and Standards. Federal and interim Federal specifications and standards, and those military and departmental specifications and standards having general application, are listed

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in the Index of Federal Specifications and Standards, issued annually and supplemented cumulatively each month by the General Services Administration. \*-For quantity requirements of Federal Specifications and Standards send orders on Form AD-38, Purchase Order, to:

Specification Activities  
General Services Administration  
7th and D Streets, S.W.  
Washington, D.C. 20407-\*

Single copies may be obtained direct from the business service center of each GSA regional office. \* \* \*

Military specifications and standards are listed in the Indexes of Military Specifications and Standards published annually and supplemented cumulatively each month by the Department of Defense. Copies of this index are available from the Superintendent of Documents, Government Printing Office, \*-Washington D.C., 20401.-\* Copies of military specifications and standards may be obtained from the distribution points listed in the index.

Forest Service specifications and standards are available from the Division of Administrative Services, Washington Office.

6332.2 - Federal, Military, and Department Qualified-Product Lists. Arrangements may be made through the Washington Office for obtaining copies of Federal, military, and departmental qualified-product lists. Lists of products qualified under Forest Service specifications are available from the Division of Administrative Services, Washington Office.

### 6333 - FEDERAL AND INTERIM FEDERAL SPECIFICATIONS AND STANDARDS

#### 6333.1 - Federal Specifications

1. Mandatory Use. Federal specifications shall be used in all purchases by the Forest Service from commercial sources, including materials, equipment, and services specified in contracts for construction work, except when such use is not feasible and the purchase is within any one of the following exceptions:

- a. The purchase is required under a public exigency, and delay would be involved in using the applicable specification.
- b. The total amount of the purchase does not exceed \$2,500. Multiple small purchases of the same item shall not be made for the purpose of avoiding the intent of this exception.

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c. The purchase involves nonstandard items of equipment, such as those for new processes and installations, experiment, test, or research or development; and spare parts, components, or materials required for repair or maintenance, or operation of existing equipment, facilities, or installations; provided, that existing specifications and standards shall be used to the extent that they are applicable.

d. The items are purchased in foreign markets for use in foreign areas.

e. Otherwise authorized by law.

f. An interim Federal specification has been issued for use in lieu of the existing Federal specification.

g. A Forest Service specification (FSH 6335) covering the item is available.

2. Deviations. When Forest Service needs cannot be met advantageously by a Federal specification, and the purchase does not come within the exceptions stated above, deviations from such specifications are permissible provided that they are authorized by the branch chief, branch of administrative services, and are supported by written justifications. Copies of such justifications, showing the authorization, shall be sent promptly to the Washington Office for determination of further requirements for notifying the General Services Administration of the deviations as provided for in \*-5 AR 243.-\*

6333.2 - Interim Federal Specifications. The use of interim Federal specifications is optional. However, maximum use should be made of interim Federal specifications, including materials, equipment, and services specified in contracts for construction work. Suggested changes in interim Federal specifications should be sent to the Washington Office.

6333.3 - Federal and Interim Federal Standards

1. Mandatory Use. Adherence to Federal standards is mandatory in purchases from commercial sources of items listed as standard, subject to the general exceptions listed in FSH 6333.1 which are also applicable to Federal standards. Purchases within these exceptions, however, should conform to the Federal standards to the maximum extent feasible. The use of interim Federal standards is optional.



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2. Deviations. If deviation from or modification of a Federal standard is required, application, giving reasons therefor, should be made through the Washington office for transmittal to the Standardization Division, Federal Supply Service, GSA, Washington 25, D. C. Federal standards do not preclude the use of existing Government stocks or excess property not in full conformity with such standards.

6333.4 - Development \* \* \*. Responsibility for the development of Federal and interim Federal specifications and Federal standards is assigned by the Administrator of General Services to Federal agencies, with their consent. Before accepting an assignment, the Washington office will determine the appropriateness of the assignment. Agency responsibility for such assigned projects is stated in GSA regulations and in notices of assignment.

(Continued on next printed page)

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\*-6334 - MILITARY SPECIFICATIONS AND STANDARDS. Military specifications and standards should be used whenever applicable if no adequate Federal or Forest Service specification or standard exists.

6335 - FOREST SERVICE SPECIFICATIONS AND STANDARDS

6335.1 - Policy. Forest Service specifications and standards are used on a servicewide basis to promote standardization of commodities purchased by the Forest Service. The Washington office will be responsible for coordinating the development and use of Forest Service specifications and standards. Forest Service specifications and standards will be issued only when all of the following conditions exist:

1. Other available specifications or standards are inadequate.
2. It is essential that the item be standardized servicewide. Reasons for standardization include:
  - a. Economy--central purchasing through GSA Federal Supply Service.
  - b. Training--the item must be the same to simplify training.
  - c. Quality--to assure that the Forest Service gets necessary quality.
  - d. Interchangeability of parts or subassemblies.
3. The item covered will be purchased on a recurring basis over a relatively long period of time. Items that are purchased infrequently or over a short period of time should be covered by bid specifications (FSH 6338).

6335.2 - Mandatory Use. Use of Forest Service specifications and standards is mandatory for all purchases from commercial sources except when such use is not feasible and the purchase is within the applicable exceptions listed in FSH 6333.1. Requests for additional exceptions shall be sent to the Washington office for approval.

6335.3 - List of Forest Service Specifications and Standards--\*

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## FOREST SERVICE SPECIFICATIONS

(All specifications listed are the responsibility of the Division of Fire Control; the 5100 prefix will be added as they are revised (FSH 6335. 51))

*-Specification number	Item	Date	Amendment	
			No.	Date
9	Axes	2/47		
5100-30a	Bentonite clay	2/11/60		
32	Paper sleeping bag	11/56	2	2/59
5100-33	Fabric sleeping bag	8/27/59		
5100-34a	Cover sheet for kapok sleeping bag mattress	2/60		
35	Water bags, 2- and 5-gallon	2/47	1	12/1/58
37	Man-pack water bag	2/47		
41	Binoculars, 6x30 power	2/47	1	4/9/34
5100-55a	Smokechaser pack board, harness, and bag	1/11/59		
81	Horse-pack water can	5/47		
83	One-gallon canteen	5/47	3	6/20/58
5100-90	Flame resistant work clothing (Interim specification)	4/18/61		
100	Pocket compass	2/47		
102	Fire hose couplings	1/52	1	8/60
103	Tee coupling	4/47		
104	Reducer coupling	4/47	1	10/1/58
5100-106a	Pack cover	1/61		
130	Osborne fire finder	2/47		
150	Economy headlight	5/26/59	1	11/60
160	Alkaline-type dry battery (6 volts)	5/29/59		
161	Water-activated battery (6 volts)	5/26/59		
5100-176	Helijumper protective clothing	6/15/59		
177a	Protective hat	1/7/59		
180	Single-edge brush hook	2/47		
182	Cotton-jacketed rubber- lined hose	3/58		
183	1-1/2 inch linen hose	5/50		

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*-Specification number	Item	Date	Amendment	
			No.	Date
184	Suction hose	5/49	1	8/60
185	3/4-inch high-pressure rubber hose	6/47	3	3/28/57
200	First aid kits	12/11/58		
5100-214a	Knapsack (packsack)	3/61		
241	Shut-off nozzle	5/47		
242	Screw-tip nozzle	5/47		
243	Garden hose nozzle	5/47		
5100-254b	Backpack pump outfit (metal)	2/27/61		
5100-255	Backpack pump outfit (coated fabric bag)	3/13/61		
260	Packsaddle pad	5/47		
5100-273a	Engine-driven pumpers	10/12/59	1	7/5/60
284	Rake and cutting tool	6/47		
285	Individual emergency ration	4/57	1	3/60
296	Retracting-string reel	2/47		
314	Tool sheaths, leather	2/47	1	6/1/59
5100-315a	Metal tool sheaths	2/19/60		
5100-320	Forest fire shelter (Interim specification)	4/14/61		
345	Portable canvas water tank	11/51		
346	50-gallon slip-on tanker	8/55		
353	McLeod tool	2/47		
355	Pulaski tool	2/47	2	2/19/60
360	Fusee backfiring torch	10/53	2	2/61
380	Siamese control valve	2/47		
381	Pressure relief valve	5/47		
382	Check and bleeder valve	5/47		
386	Hardwood wedge	2/47		
388	Emergency wire	2/47		
5100-400	Cargo dropper's harness	3/2/60		
5100-450	Belt weather kit	11/2/59	1	3/61
5100-451a	Low capacity rain gage	8/4/59		
5100-452	Measuring stick for low capacity rain gage	8/4/59		
5100-453	Totalizing wind counter	8/20/59		
457	Fan psychrometer	2/47		
458	Pocket sling psychrometer	2/47		
461	Fuel moisture scale	4/47		

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*-Specification number	Item	Date	Amendment	
			No.	Date
502	Model FS-2 parachute assembly	3/57		
503	Model FS-3 parachute canopy and container assembly	3/57		
5100-512a	Model FS-2 parachute canopy	11/59		
5100-513a	Model FS-3A parachute canopy	11/59		
5100-515b	Model FS-5A parachute canopy	5/28/61		
5100-522a	Container for smoke- jumper backpack parachute canopies	12/59		
523	Model FS-3 parachute container	11/56		
5100-533a	Model H-3 parachute harness	8/59		
5100-541a	Smokejumper protective helmet and mask	2/19/60		
542a	Smokejumper protective suit	7/58		
5100-544	Smokejumper drift streamer	9/28/59		

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6335.3

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FOREST SERVICE STANDARDS

<u>Standard number</u>	<u>Item</u>	<u>Date</u>
Interim standard 1	Spark arresters for internal combustion engines	April 7, 1959

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**\*-6335. 4 - Development of Forest Service Specifications**

**6335. 41 - Policy.** Each Washington office division will be responsible for developing and maintaining specifications for items of primary interest to that division. The Washington office Division of Administrative Services will coordinate specification work among divisions.

**6335. 42 - Procedure.** The needed field performance requirements must be determined before the development of a specification. After this is done, a certain normal procedure is followed in developing a Forest Service specification. Specific details of this procedure should be worked out by each division.

1. The Washington office division concerned will assign responsibility for developing a specification to an equipment development center, region, station, or other qualified unit. The division will provide necessary special instructions such as type of specification (regular, qualified-product, or interim), and completion schedule.

2. The unit responsible for developing the specification will:

a. Review existing Federal, military, departmental, industrial, and other specifications for adequacy in meeting Forest Service needs. If one is found that can be used directly or with slight modification, it should be recommended for use and the following steps omitted.

b. Use existing specifications, test available equipment, and consult with manufacturers in order to determine:

(1) Specification performance requirements necessary to make sure that the item will meet field performance requirements.

(2) Inspection and test procedures necessary to make sure that the specification requirements are met.

(3) Packaging, marking, and other special requirements to insure safe delivery and storage at the lowest cost.

c. Prepare a proposed specification using standard language and form (FSH 6335. 5) and send to the Washington office division for review. -\*

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- \*-3. The Washington office division concerned will:
  - a. Review the proposed specification.
  - b. When necessary, have the specification reviewed by another person, preferably in Government.
  - c. When necessary, return the specification to original writers with comments and directions for further work needed.
  - d. Send specifications to interested suppliers for review, suggestions, or comments, unless this step is delegated to preparing unit.
- 4. The unit responsible for developing the specification will then:
  - a. If directed by Washington office division, route the proposed specifications to manufacturers for comments and suggestions.
  - b. Revise the proposed specification as needed and return to Washington office, with summary of action taken.
- 5. The Washington office division will:
  - a. Consult field units if proposed specification departs radically from original performance requirements.
  - b. Transmit 2 copies of specification in final form, 1 copy suitable for multilithing, to Division of Administrative Services, Washington office.
- 6. Division of Administrative Services will:
  - a. Make sure that the specification is not in conflict with another Forest Service or Federal specification.
  - b. Review the specification for procurement adequacy and, when necessary, return to the Washington office division for correction.
  - c. Publish and distribute the specification in accordance with a plan mutually agreed upon with the Washington office divisions concerned. -\*

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\*-6335. 5 - Preparation of Forest Service Specifications

6335. 51 - Numbering. All servicewide specifications will be numbered. Numbers (in any reasonable sequence) will be assigned by the Washington office division responsible for the development of the specification. So that the division responsible for the specification may be readily determined, each number will be preceded by the numeric code for that division shown in FSH 1134. 1 and illustrated as follows:

Fire Control	5100
Range Management	2200
Timber Management	2400
Engineering	5600
Watershed Management	2500
Wildlife Management	2600
Land Uses Management	2700
Recreation Management	2300

All Forest Service specifications listed in FSH 6335. 3 will be converted to this new numbering system as soon as practicable.

6335. 52 - Sample Format for Forest Service Specification-\*

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\*-Specification (number)  
 (Date)  
 Superseding  
 Specification (number)  
 (Date)

U. S. DEPARTMENT OF AGRICULTURE  
 FOREST SERVICE

## SPECIFICATION FOR

(Name of specification)

A. General

A. 1. Purpose and Description. (One or two concise paragraphs are included here to describe the article and give the purpose and conditions of use. Do not include requirements in this section.)

A. 2. Purchasing Officer's Instructions. (This section is for use in giving instructions to the purchasing officer and usually includes the following.)

A. 2a. Required Options. Bid invitations and orders must specify options selected by the purchasing officer under the following sections:

<u>Section C. 1.</u>	)	Options that must be taken
	)	by the purchasing officer
<u>Section D. 1.</u>	)	are listed here in the order
	)	in which they appear in the
Etc.	)	specification.

A. 2b. Other Options. If deserved, bid invitations and orders may specify options selected by the purchasing officer under the following sections:

<u>Section C. 2.</u>	)	Options that may be taken
	)	at the discretion of the
<u>Section D. 3.</u>	)	purchasing officer are
	)	listed here. -*
Etc.	)	

Page 1 of 2

(Appears on first page only; subsequent pages carry page number only)



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\*(Specification number appears in  
this position on odd pages only)

A. 2c., A. 2d, etc. (Additional sections may be used to cover contractual instructions such as warranties, quality control bid samples, and availability of replacement parts.)

- B. Other Applicable Plans and Specifications. The following specifications, standards, etc., of the issue in effect on the date of invitation for bids, form a part of this specification. (List all documents which form a part of the specification.)
- C. Requirements. (All essential requirements and descriptions applying to the design, material, or product covered by the specification shall be stated in this section. The requirements should be so worded as to provide a definite basis for rejection in those cases where the quality and workmanship are such that they do not conform to the requirements. Specifications should not ordinarily contain contract terms and conditions but should be limited to proper description of the article required. Information relative to contractual features may be included in section A. 2. to insure that such contractual features will be covered in invitations for bids and contracts.)
- D. Preparation for Delivery. (This section discusses the applicable requirements for preservation, packaging, packing, and marking for shipment of packages and containers.)
- E. Method of Sampling, Inspection, and Test. (This section includes procedures concerning sampling, inspections, and tests, as applicable. Complete and detailed information shall be provided concerning the classification, methods and frequency of sampling, inspection, and test methods to determine conformance with the specification requirements. Specific instructions regarding the acceptance or rejection of a lot shall be included. Requirements stated in section C shall be supported by appropriate test provisions in this section, arranged in the same consecutive order as the corresponding requirement, when practicable. Applicable requirements for sampling, inspection, and test from another document shall not be repeated.)-\*

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\*-The identification block located in the upper right-hand corner of the title page serves the purpose of identifying the specification as to number, date, and type. Sample blocks follow:

<u>Interim Specification</u>	<u>Interim Specification 5100-182</u> <u>November 13, 1958</u>
<u>First Issue</u>	<u>Specification 5100-182</u> <u>March 10, 1959</u> <u>Superseding</u> <u>Interim Specification 5100-182</u> <u>November 13, 1958</u>
<u>First Amendment</u>	<u>Specification 5100-182</u> <u>Amendment-1</u> <u>April 24, 1959</u>
<u>Second Amendment</u>	<u>Specification 5100-182</u> <u>Amendment-2</u> <u>May 11, 1959</u> <u>Superseding</u> <u>Amendment-1</u> <u>April 24, 1959</u>
<u>First Revision</u>	<u>Specification 5100-182a</u> <u>October 12, 1959</u> <u>Superseding</u> <u>Specification 5100-182</u> <u>March 10, 1959</u>
<u>Cancellation</u>	<u>Specification 5100-182a</u> <u>Cancellation</u> <u>December 23, 1959</u>

The format for proposed Forest Service specifications is the same as the foregoing sample except that the identification block is not used and the word "Proposed" is inserted before the words "Specification for."

The format for amendments is the same as the sample except that only the sections changed are shown. Amendments are issued on a cumulative basis, so only the latest amendment is needed; that is, amendment 3 includes amendments 1 and 2 and supersedes them.

6335. 53 - Writing Style. In some respects the writing style used in specifications is unique. The detailed instructions on this subject given in GSA regulation 1-VI-202.09 shall be followed whenever-\*

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\*-practical. For standard clauses and phrases, consult current Forest Service or Federal specifications. The Forest Service should strive for consistency in standard clauses in Forest Service specifications.

Paragraph structure for Forest Service specifications is as follows:

Section	A
First paragraph	A. 1
First subparagraph	A. 1. a
First sub-subparagraph	A. 1. a(1)

Use of the last breakdown is discouraged.

6335.6 - Qualified-Product Specifications. Forest Service specifications which call for prequalification of a product may be prepared if one or more of the following conditions exist. Note that all these conditions deal with testing to determine acceptability of the product.

1. The time required for testing after award of contract would unduly delay delivery of the item being purchased.
2. The cost of repetitive testing would be excessive.
3. The tests would require expensive or complicated testing apparatus not commonly available.
4. The Forest Service requires assurance, prior to award of the contract, that the product is satisfactory for its intended use.
5. The determination of acceptability would be based upon performance data in addition to technical requirements contained in the specification.

6335.7 - Development and Preparation of Forest Service Standards. The development and preparation of Forest Service standards normally follow the same pattern as for Forest Service specifications. The outline form is normally the same except that sections A, 2, D, and E do not apply to standards. The title and numbering are the same except that the word "Standard" is substituted for "Specification."

6336 - OTHER DEPARTMENTAL SPECIFICATIONS AND STANDARDS. The use of specifications and standards issued by other departments is encouraged but is not mandatory. They are available from the headquarters office of the department concerned. -\*

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\*-6337 - OTHER SPECIFICATIONS. Specifications and standards issued by industry, States, and nonprofit societies should be used whenever practical. Examples of these are National Fire Protection Association (NFPA), American Society for Testing Materials (ASTM), and American Standards Association.

6338 - BID SPECIFICATIONS

6338.1 - Use. Bid specifications should be used when no other specification is available or when the conditions listed in FSH 6335.1 cannot be met. Bid specifications will normally be used for local or regional purchases or nonstandard items or for items or services needed on a nonrecurring basis, such as:

1. Reseeding or spray services.
2. One-of-a-kind type of equipment.
3. Buildings, bridges, etc.
4. Aircraft rental services.

6338.2 - Preparation. Bid specifications are prepared by the unit desiring the equipment or services and are reviewed by the contracting officer. To avoid confusing bid specifications with mandatory Forest Service specifications, they should be prepared in a different format and will not be numbered.

1. Basic Requirements. Bid specifications must be so drawn as to set forth the actual minimum needs of the Government clearly, fairly, and accurately, and in terms which will (1) permit full and free competition by all qualified bidders, (2) restrict the use of appropriations to the acquisition of actual minimum needs, (3) secure such needs at the lowest cost, and (4) guard against injustice, favoritism, collusion, graft, etc., in transacting the public business. The following principles of specification writing should be observed in order to assure that these basic requirements of a specification are met (13 Comp. Gen. 284 and B-117773 of May 27, 1954).

2. Language. Specification language should be positive, using simple words and short sentences. Technical words and phrases should be avoided except when they are necessary and recognized in the trade as having a definite meaning and are so used. Trade terms must be used in their common or local meaning. Use the same word throughout, never synonyms. Restrict abbreviations to those in common use, and not subject to misunderstanding. A normally abbreviated term should be spelled out when first used in the text but may later be abbreviated if clear. -\*

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3. Arrangement. The extent of detailed description necessary adequately to specify various types of supplies or services may vary widely and will therefore affect the arrangement of the specification. Brief descriptions may be adequately stated in one paragraph, whereas more detailed descriptions will usually require a longer, more formally arranged specification. As a general guide, the following arrangement of the subject matter of specifications will be followed, the subject matter of each paragraph to be included as applicable and as described in items 4 through 15.

- a. Service requirements.
- b. Technical or performance details.
- c. Warranty requirements.
- d. Requirements for samples.
- e. Inspection and testing provisions.
- f. Packaging, packing, marking, and shipping provisions.
- g. Basis of payment.

4. Service Requirements. This is a statement in the nature of a preamble to the specification, stating its intent, the reasons for its specific minimum requirements, and such further information as will assist in ensuring a complete understanding of the type of supply or service desired. The service requirements would include, when appropriate, information regarding the climate, altitude, topography, or location; availability of adequate repair facilities; exposure to physical or chemical influences; and other conditions that are significant to performance. There should be stated in the service requirement the reasons for any restrictive provisions in the specification, so that there may be a mutual understanding of what is required and why.

5. Technical Details. When it is impractical to rely on a statement of how the specified item shall perform, complete details of how it shall be constructed or constituted shall be provided. Particular care must be taken in drafting technical details of the specification to show the essential minimum elements of design or formulation, degrees of tolerance allowable, and such other technical factors as will be required by the bidder to understand exactly what is the minimum required. Indefinite terms, such as "best commercial qualify" and "well



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manufactured," are not to be used. When a product is specified which is regularly distributed in commercial channels, any specification requirement of a particular quality or grade of a restrictive nature should be noted for the bidder's attention as well as being justified in the service requirements. Federal standards must be adhered to and commercial standards should be followed wherever practicable.

6. Performance Details. Whenever practical, and in lieu of stating the technical details, a specification should state what the item is expected to do. Performance details should include, when appropriate, such items as: output in terms of available power, velocity, production per minute, area of coverage, depth of penetration; capacity in terms of total load, cubic content; dimensional limitations; hardness; maneuverability; degree of tolerance or accuracy; weight limitations; and resistance to external physical and chemical influences. Particular care must be used in writing performance details to avoid conflicts; for instance, if the speed or capacity of a machine is stated, the horsepower of the power unit required would not be specified but rather it would be stated that the power unit is to have sufficient capacity to operate the machine at stated speeds under stated loads. Whenever performance details are specified, there must be separately stated the type of inspection or test that will be used to determine if the item furnished meets the performance requirements of the specification. For specifications that do not require extensive performance details, it is sometimes desirable to combine such requirements with the service requirements in the interest of readability.

7. \*-Guarantee (FSH 6322.34)-\*

8. \*-Samples (FSH 6322.34, FSH 6323.21)-\*

9. Inspection and Testing Provisions. The method to be used to determine whether items furnished meet contract specifications should be stated in the specification. This is particularly necessary when service requirements and performance details are relied upon in the specification to describe the Government's needs. Although not a part of the specification itself, advance arrangements should be made for adequate inspection and testing in accordance with FSH 6340.

10. Packaging, Packing, Marking, and Shipping Provisions. Commercial practices should be followed whenever practicable in such provisions. Any special requirements should be specifically noted for the bidder's attention. Provisions should be

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made for special instructions and warning notices on package and shipping containers if toxic, flammable, explosive, or other materials dangerous to personnel or property are involved.

11. Basis of Payment. If the specification contemplates elements of a service nature, or deliveries extending over a considerable period of time, it should clearly state the basis on which payment will be made for the services performed or deliveries made and accepted. Provision should be made in such cases for a sufficient retention during the contract of payments due (normally 10 percent) to protect the Government in the event of failure of the contractor to satisfy fully the contract requirements.

12. Materials Furnished Contractor by Government. The specification should clearly identify any materials to be furnished by the Government for fabrication or use by the contractor, with a stipulation therein that title remains in the Government and all such property not consumed in the performance of the contract will be returned upon contract completion. Ordinarily, no bond or insurance coverage is required. However, when the value of the material is substantial and it is known that the contractor's financial position is not adequate to cover potential loss or damage, a requirement for insurance may be incorporated in the specification. In either case, the contract shall contain an appropriate provision to fix financial responsibility of the contractor for any loss or damage to the Government-furnished property.

13. Brand Name Products or Equal. Purchase descriptions, subject to the limitations herein, may include reference to one or (preferably) more commercial products described by brand name, make, model numbers, or other appropriate nomenclature followed by the words "or equal." Such "brand name or equal" purchase description shall contain the following information to the extent available:

a. Complete common generic identification of the items required, together with a description of the main and required characteristics.

b. Complete name of manufacturer, producer, or distributor of each brand name product referenced. (Also, address if company is not well known.)

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c. Applicable model, make, or catalog number for each brand name product referenced, and the catalog in which it appears. (When it is necessary to use a catalog description, or extracts therefrom, such description shall be identified as being that of the particular named manufacturer, producer, or distributor.)

When a "brand name or equal" description is included in an invitation for bids the following shall be inserted after each item so described in the invitation, for completion by the bidder:

Bidding on:  
 Manufacturer's  
 Name \_\_\_\_\_ Brand \_\_\_\_\_ No. \_\_\_\_\_

In addition, the following "Brand Names" clause shall be included in the invitation (FSH 6323.21).

## BRAND NAMES

(For the purpose of this clause references to "brand name" shall mean brand name and/or make or model number.)

(a) If articles have been identified in this invitation by a "brand name or equal" description, such reference is intended to be descriptive, but not restrictive, and is for the sole purpose of indicating to prospective bidders a description of articles that will be satisfactory. Bidders are not expected to furnish exact duplicates but only articles which are equal, insofar as the Government's needs are concerned, to the referenced brand name articles. Bids offering articles other than brand name articles referenced in this invitation will be considered only if such offered articles are clearly identified in the bids and bidders furnish with their bids (1) descriptive material including cuts, illustrations, drawings, or other graphic material, which will clearly show the characteristics of the articles offered, and (2) a statement showing in detail the differences between the articles offered and those referenced in the invitation. Failure to furnish the information required by (1) and (2) above will require rejection of the bids.

(b) Unless the bidder clearly indicates in his bid that he is offering a different article, his bid shall be considered as offering a brand name article referenced in the invitation.

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(c) Bidders are cautioned that in evaluating bids offering articles other than the brand names referenced in the invitation, the Government will consider that the bidder intends to bind himself to furnish only the articles described in his bid and any attached descriptive material.

If a bidder offering brand name articles which differ from those articles referenced in the invitation proposes to modify the brand name articles he has identified in his bid so as to make the offered articles equal those referenced insofar as the needs of the Government are concerned, he shall (1) include in his bid a clear description of such proposed modifications, or (2) clearly mark any descriptive material to show the proposed modifications. Modifications proposed after bid opening will not be considered.

Brand name or equal purchase descriptions may be used only when suitable specifications or standards are not available, and a purchase description cannot be prepared because (1) construction or composition of the product to be procured is too technically involved, (2) the public exigency precludes timely development, or (3) preparation would be impracticable or uneconomical. When a brand name or equal purchase description is used, the applicable reason therefor will be noted in the purchase file.

14. Underwriter's Certificate or Label of Approval. Specifications may include a requirement that articles shall conform to standards adopted by a recognized independent laboratory or testing organization in the absence of Government-prescribed standard or specifications, but the absence of a certificate, label, or approval from such organization will not automatically exclude otherwise acceptable products (33 Comp. Gen. 573). A mandatory specification requirement that such a certificate, label, or approval be furnished is authorized only when it can be definitely established that such standards are generally recognized and accepted in the industries involved and the inclusion of such a requirement would not prevent any manufacturer from bidding on the article specified. If this cannot be done but it is desirable to accept such labels, etc., as evidence of conformity with certain of the specification requirements, the following specification wording is suggested:

The bidder shall submit proof that the material or appliance he proposes to supply under this specification conforms to the standards of the (Underwriters' Laboratories, Inc., as regards fire and casualty

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hazards). The label of the (Underwriters' Laboratories) will be accepted as conforming with this requirement. In lieu of the label, the bidder may submit independent proof satisfactory to the purchasing agency that his material or appliance conforms to the published standards, including methods of test, of the (Underwriters Laboratories).

The parenthesized wording above would need to be changed to state the particular standards organization whose approval is desired.

15.\*-Descriptive Literature

a. Definition. As used herein, the term "descriptive literature" means information, such as cuts, illustrations, drawings and brochures, which show the characteristics or construction of a product or explain its operation, furnished by a bidder as a part of his bid to describe the products offered in his bid. The term includes only information required to determine acceptability of the product (FSH 6322.34) .

b. Policy. Bidders shall not be required to furnish descriptive literature as a part of their bids unless needed to determine before award whether the products offered meet the specification requirements of the invitation for bids and to establish exactly what the bidder proposes to furnish. It may be appropriate to require descriptive literature in the procurement of highly technical or specialized equipment, or where considerations such as design or style are important in determining acceptability of the product.

c. Justification. The reasons why acceptable products cannot be procured without the submission of descriptive literature shall be set forth and filed in the case file, except where such submission is required by the formal specifications (Federal, military, departmental, etc.) applicable to the procurement.

d. Requirements of Invitation for Bids. When descriptive literature is required, the invitation for bids shall clearly state what descriptive literature is to be furnished, the purpose for which it is required, the extent to which it will be considered in the evaluation of bids, and the rules which will apply if a bidder fails to furnish it before bid opening or if the literature furnished does not comply with the requirements of the invitation for bids. A clause substantially as follows will meet these requirements.-\*



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## \*-REQUIREMENT FOR DESCRIPTIVE LITERATURE

(a) Descriptive literature as specified in this Invitation for Bids must be furnished as a part of the bid and must be received before the time set for opening bids. The literature furnished must be identified to show the item in the bid to which it pertains. The descriptive literature is required to establish, for the purposes of bid evaluation and award, details of the products the bidder proposes to furnish as to (1/ ).

(b) Failure of descriptive literature to show that the product offered conforms to the specifications and other requirements of this Invitation for Bids will require rejection of the bid. Failure to furnish the descriptive literature by the time specified in the Invitation for Bids will require rejection of the bid, except that if the material is transmitted by mail and is received late, it may be considered under the provisions for considering late bids, as set forth elsewhere in this Invitation for Bids.

/The clause prescribed above may be modified by adding the following paragraph to provide that the requirements for furnishing descriptive literature may be waived to a particular bidder if he states in his bid that the offered product is the same as a product previously or currently being furnished to the procuring activity and that such product complies with the specification requirements of the current invitation for bids.7

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1/ Contracting officer shall insert significant elements such as design, materials, components, or performance characteristics; or methods of manufacture, construction, assembly, or operation, as appropriate. - \*

## TITLE 6300 - PROCUREMENT MANAGEMENT

\*(c) However, the requirements for furnishing descriptive literature may be waived as to a bidder if (1) the bidder states in his bid that the product he is offering to furnish is the same as a product he has previously furnished to the (2/ ) under a prior contract and the bidder identified the contract, and (2) the contracting officer determines that such product meets the requirements of this Invitation for Bids.

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2/ Contracting officer shall insert "procuring activity" or other appropriate designation. -\*

## TITLE 6300 - PROCUREMENT MANAGEMENT

### CHAPTER 6340 - RECEIVING AND INSPECTING SHIPMENTS

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## TITLE 6300 - PROCUREMENT MANAGEMENT

## CHAPTER 6340 - RECEIVING AND INSPECTING SHIPMENTS

6341 - RESPONSIBILITIES

1. Overall Responsibility. The administrative head of each Forest Service unit is responsible for the adequate inspection of all supplies received to see that specifications have been complied with, and, except when an inspection has already been made by a Government official at factory, testing laboratory, Government warehouse, or other point prior to receipt at destination, will see that all shipments immediately upon arrival are properly inspected by a qualified person. When the warehouseman or receiving officer is qualified, such inspections will be made by him, but in many cases it will be necessary to have inspection made by someone more familiar with the particular item. In such cases, the receiving officer will notify the forest supervisor or other administrative officer, who will assign a properly qualified person to make the inspection.

Other supplies will require specialized or laboratory tests which cannot be undertaken by field units. When available the facilities of other Government agencies as listed herein should be utilized, and in other instances the use of commercial firms or laboratories may be necessary.

2. Receiving Officer. The receiving clerk, warehouseman, or other qualified employee designated to receive shipments is responsible for receipt, inspection, and prompt reporting of equipment, materials, and supplies received by him. It is necessary that receiving reports be submitted without delay, in order that discounts may not be lost through carelessness or neglect.

6342 - RECEIVING SHIPMENTS

6342.1 - Checking Shipments. As each shipment is received, it should be examined and compared with the purchase order and bill of lading. If a package shows evidence of having been tampered with, it should be weighed, when practicable, and compared with the weight shown on the bill of lading or shipping ticket. If the weight differs, the package should be opened and checked under such precautions as will obviate the possibility of dispute regarding the responsibility for loss, damage, or bad condition. If Government bill of lading shipment is involved, notation of the nature and extent of the loss and damage should be made in the space provided on reverse of the bill of lading.

If prepaid shipment, promptly notify the purchasing officer of the loss or damage. In either case, have carrier's representative



## TITLE 6300 - PROCUREMENT MANAGEMENT

acknowledge the shortage or damage on the consignee's copy of the carrier waybill prior to receipting for the shipment.

The quantity and quality of the materials received shall agree with the terms of the specifications on the purchase order. It is the responsibility of the receiving officer to check and report any differences. When the equipment or material is of a technical nature and requires a specialized inspection, the receiving officer should arrange for prompt inspection by some qualified person with the necessary technical experience.

6342. 2 - Reporting Procedure. Receipt of equipment and supplies must be acknowledged on the forms provided or by wire immediately after receipt when discount is involved and discount period is short. Receiving officer's receipt on copy of the Standard Purchase Order forms without additional comments may be considered as a certification that materials received were in accordance with specifications. Shipments received in a damaged condition or which do not meet specifications should be reported to the purchasing officer without delay.

6342. 3 - Date of Receipt. The date of receipt of the goods will be dependent upon the following conditions:

1. F.O.B. Destination Orders. If inspection has been made at the factory and shipment is purchased "delivered at destination," the actual date of receipt is the date of receipt by the receiving office at destination.
2. F.O.B. Factory Orders. If inspection has been made at the factory and the goods are purchased "f. o. b. factory" and shipped on a Government bill of lading, the date of receipt is the date of delivery to the transportation company representative (at shipping point) as evidenced by his signature and date on the bill of lading.
3. Inspection at Destination. If inspection is to be made at destination, whether purchase is "f. o. b. factory" or "delivered at destination," the date of receipt is the date of inspection after receipt at destination. It is the duty of the receiving officer to see that inspection is made without delay.
4. F.O.B. Destination Damage Cases. If the shipment is damaged in transit and the purchase price included delivery to destination, the shipper is responsible for delivery, and the delivery date is the date shipment is repaired or replaced.
5. Servicing or Unloading by Contractors. If equipment is purchased "delivered at destination" or "f. o. b. shipping point," to be serviced or unloaded by the contractor or his agent, the receipt date is the date consignee received notice from such contractor or agent that the equipment is serviced, unloaded, and ready for use.

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6. Servicing or Unloading by Government. If equipment is purchased "delivered at destination" or "f. o. b. shipping point" and is not to be serviced or unloaded by the contractor, the date of receipt is the date the equipment is placed for unloading at destination, or received by the transportation company to which it was tendered. The policy method outlined here and in item 5 immediately above for determination of receipt date is contingent on whether the equipment meets specifications. If, upon inspection at destination, the equipment in some major respect does not meet specifications, the receipt date will be the date on which the contractor brings the equipment up to specifications.

6342.4 - Bond or Receipt in Lieu of Actual Delivery. All materials, supplies, and equipment must be actually delivered into the possession of the Government and inspection and acceptance thereof completed before voucher may be passed for payment. Contractors may not hold materials, supplies, or equipment in their own warehouse or factories and issue warehouse receipts or bonds guaranteeing future delivery. Such action does not constitute delivery within the purview of section 3648, Revised Statutes. Thus, such bond or receipt may not be accepted in lieu of actual delivery as a basis for payment. (Comp. Gen. Dec. A-56523, to Federal Civil Works Administration, Dec. 2, 1934, unpublished.)

6342.5 - Variations in Quantity. Generally, when a purchase order specifies exact quantities, the quantity delivered should be in exact accordance therewith; however, when it is the practice of the trade, a variation not exceeding 10 percent, caused by conditions of loading, packing, or allowances in manufacturing process, may be considered as complying with the terms of the order, provided the increase in cost does not exceed the authorized dollar-limitation for purchases when made in the open market. When such a provision is included in the terms of the contract under which a purchase order is placed, acceptance of an "underrun" or "overrun" within the contract limits is mandatory. Otherwise, the acceptance is left to the discretion of the ordering office. Payments shall be made for actual quantities delivered and accepted.

6342.6 - Reporting Delivery of Motor Vehicles

1. Checking Against Specifications. It is the intention of the Federal Supply Service to furnish the receiving agency sufficient information, in the copy of the purchase order or in some other manner, to determine whether the vehicles received meet the specifications and what servicing (for example, unloading, lubrication) will be performed under the contract at delivery point. When inspection has been made and it has been determined that delivery and service have been performed according to contract, or any deficiencies

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have been adjusted, the delivery report should be forwarded promptly to the Federal Supply Service in accordance with receiving agency procedures.

2. Missing Items or Nonperformance of Services. The procedure to be followed when delivery does not conform to contract terms will be governed by conditions as follows.

3. Items Required for Operation of Vehicles. In the case of missing items or servicing required by the contract that must be supplied or performed before the vehicle can be legally or safely operated, such as taillights, windshield wipers, unloading from cars, lubrication, the receiving agency should:

a. Try first to obtain such service or items without additional cost to the Government from the local representative of the contractor, if any, at the delivery point or at a point nearby. If this is accomplished satisfactorily, the delivery report should then be submitted with an accompanying explanation of the facts to the Federal Supply Service.

b. If the local representative of the contractor can perform the services required, but will not do so without payment therefor, the receiving agency should place an order with such local representative and, when the services have been performed, make payment to him. A claim should then be filed with the Federal Supply Service for an adjustment. The claim should be in the form of a letter containing all pertinent facts, to which are attached receipts from the vendor supporting the amount claimed, and should accompany the delivery report.

c. If there is no local representative or if the local representative or agency of the contractor cannot or will not perform the services required, the receiving agency should obtain the items and services from any source available at the lowest cost obtainable, pay for them, and submit claim for adjustment as stated above.

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4. Items Not Required for Operation of Vehicles. In the case of missing items or servicing required by the contract, but not essential to placing a vehicle in operation, such as a sun visor or hubcaps, the receiving agency should proceed as outlined above. If, however, the local representative of the contractor cannot or will not supply the item or perform the servicing required by the contract, all pertinent facts should be reported by letter through channels to the Federal Supply Service. (Do not receipt for and mail the delivery report until all contract requirements have been complied with.) The Federal Supply Service will handle the case with the contractor from that point on and the receiving agency will be duly informed of the action taken. When the vehicles have been finally brought into conformity with the contract terms, the delivery report should be forwarded to the Federal Supply Service.

6343 - MATERIAL DELIVERED NOT MEETING SPECIFICATIONS

6343.1 - Urgent Need for Material. A receiving officer should not accept "just as good" materials without authority from the purchasing officer; nor should he enter into any negotiations with the vendor with a view to modifying delivery requirements or any other terms of the purchase contract.

If the interests of the Government so require, material deviating from the contract specifications may be accepted and paid for at a reduced price based upon the value of the substandard material as compared to the value of specified material. In other words if the material delivered fails to come up to specifications, yet is urgently needed and the delay incident to replacement would be less advantageous than using the substandard material, the substandard material may be accepted, provided payment therefor is scaled down to the actual value of material received as compared to the specified material.

When it is found that materials or supplies of a grade inferior to that called for have been received and used, prior to a determination that the materials specified have not been delivered, the purchasing officer should obtain from the receiving officer a statement as to the actual amount of inferior material received and accepted. Unless such information is already available, the purchasing officer should make informal inquiries of the trade for the purpose of establishing the fair value of such inferior merchandise.

In both instances above, vouchers covering such purchases should be transmitted to the General Accounting Office for direct settlement, together with a full and complete statement supporting the reductions and explaining how the value and amount of inferior materials were determined.

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6343.2 - Rejection of Shipment

1. From Local Purchase Sources. When all or part of the material fails to meet the specifications, the contractor should be advised immediately, in detail, of the reasons why the shipment cannot be accepted. He should be informed, also, that the material or equipment is being held at his risk awaiting his instructions as to disposition.

2. From Federal Supply Service Centers. If material not meeting specifications or to be returned for other reasons is received from a Federal Supply Service center, return authorization and shipping instructions should be requested and received from the supply center involved prior to return of the merchandise.

3. From Federal Supply Schedule Contractors. See FSH 6312.31 for instructions for processing rejections.

6343.3 - Return of Rejected Goods

1. To Local Purchase Sources. Rejected material or equipment should be returned to the vendor at his expense only. In returning rejected material, an itemized receipt signed by the vendor or his authorized representative should be obtained and filed with the record of the transaction.

Whenever rejected material or equipment is returned to a contractor via common carrier, the bill of lading or receipt shall contain an itemized list of such material. The notice and receipt or copy of bill of lading will be filed with the record of the transaction.

\*- Upon the refusal of a contractor to remove or to accept the return of material which was rejected by the Government for failure to conform to the specifications, the Government acquires the right to resell the rejected material to cover storage and handling costs, provided that the material was properly rejected (Comp. Gen. Dec. B-138939, Apr. 29, 1959) .-\*

2. To Federal-Supply-Schedule Contractors (FSH 6312.31)



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6344 - INSPECTION AND TEST

6344.1 - Purpose of Inspection and Test. All purchases of materials, supplies, and equipment of every character shall be subject to inspection and approval as to quantity and quality before payment. Persons conducting inspections shall inspect carefully as to quantity and quality, making or causing to be made such tests as may be required. No material may be accepted unless the inspecting officer is satisfied that it conforms to specifications included in the contract. In case of public necessity, materials not fully meeting specifications may be accepted by special authority of the contracting officer provided appropriate price adjustment is made (par. 5, SF-32).

Certain articles and materials may be of such technical nature as to require inspection by specialists. In such cases, the administrative officer should assign a properly qualified person to make the

(Continued on next printed page)

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inspection. Other supplies by nature of their manufacture may require specialized or laboratory tests which cannot be handled by field units. When available, the facilities of other Government agencies should be utilized; and, in other instances, the use of commercial firms or laboratories may be necessary.

**6344.2 - Place of Inspection and Test.** To the extent practicable, inspection of material shall be made at such times and places (including inspection during the period of manufacture and at subcontractor's plants) as may be necessary to determine that the material conforms to contract requirements. Ordinarily, inspection of material should be conducted at origin or source, but may be conducted at destination or such other designated points as the best interests of the Government require.

1. Inspection at Origin. Materials purchased should be inspected at origin or source (except as provided in item 2 below) when the situation meets one or more of the following conditions:

- a. Items are in continuous volume production at a given plant.
- b. Plants are so grouped geographically as to make visits by inspectors practicable and economical.
- c. It is necessary to determine compliance with contract requirements as items are produced, or as soon thereafter as possible, to eliminate considerable expense to the Government or to the contractor resulting from delay in correcting the item, and from manufacture and shipment of unacceptable products.
- d. Products where quality can be assured or defects determined only during process of manufacture.
- e. Products requiring ingredients or proportion of ingredients which may be determined only during process of manufacture.
- f. Special instruments, gages, or other facilities for inspection are available only at the manufacturer's plant.
- g. It would be necessary to replace costly preservation, special packaging, and packing which would be destroyed by destination or in transit inspection.

2. Inspection at Destination. Materials purchased may be inspected at destination, provided the interests of the Government are adequately protected, when the situation meets one or more of the following conditions:

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- a. Off-the-shelf purchases from distributors rather than from manufacturers.
- b. Items having relatively simple specifications that do not require special equipment for inspection and for which inspection at origin is not otherwise desirable.
- c. The quantity of material purchased is small, and inspection at origin is uneconomical.
- d. Necessary specialized testing equipment is located only at destination.
- e. Products, such as biologicals and antibiotics, processed under the direct control of the National Institute of Health or the Federal Food and Drug Administration.
- f. Perishable subsistence.
- g. Other classes of purchases when determinations are made that destination inspection is in the best interest of the Government.

6344.3 - Inspection by Vendor. The practice of having vendors furnish inspection of supplies should be permitted only where the procedure of inspection and delivery will insure receipt of the supplies actually inspected. Where this practice is followed, vendor should be required to obtain the inspection from an agency acceptable to the Forest Service, and to furnish a certificate from such agency showing the results of inspection.

6344.4 - Kind and Extent of Inspection. The kind and extent of inspection should fully protect the interests of the Government, comply with the terms of the contract, and have due regard for the circumstances, including the monetary value and functional importance of the material. Standard sampling techniques and statistical quality control procedures should be fully utilized. Material which has been inspected by one agency of the Government for compliance with specifications and contract requirements in connection with acceptance of the material under a contract should not, ordinarily, be reinspected by another agency for that purpose.

6344.5 - Certificate of Inspection. The receiving report in cases involving specialized inspecting and tests should be accompanied by a statement showing that the articles covered meet the specifications. When the articles do not meet the specifications, the purchasing officer should be notified immediately and furnished with a statement showing in what respect the articles do not comply with the specifications.

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6344.6 - Inspection at Factory. When inspection is to be made at factory, arrangements for inspection should be made at the time order is prepared so that there will be no delay in having the inspector on hand at the factory when the material is ready for inspection. When ready for inspection the contractor should notify the inspector, who will make the inspection in accordance with specifications and report the result to the purchasing officer. When inspection is made at factory, such inspection insofar as acceptance of the equipment is concerned is final unless otherwise stipulated in the contract. Factory inspection does not preclude inspection at destination.

When a contract is made for inspection by another Government agency or commercial firm, it should be covered by purchase order and an obligation set up covering the cost of such inspection.

6344.7 - Material Acceptable Without Inspection. Various materials manufactured or graded in accordance with standard specifications are labeled or grade-marked at the factory. Inasmuch as these undergo reliable inspection before shipment, they need not undergo reinspection upon delivery other than superficial examination of type, size, and condition. Examples of such items are fire extinguishers and electrical products having the Underwriters' label, and lumber having the grade-mark of the appropriate manufacturer's association.

6344.8 - Lumber Deliveries. To facilitate the disposition of any disagreements that may arise concerning the quality or quantity of lumber or timber products delivered by a vendor, the following procedure based on the principles of American Lumber Standards is recommended:

1. Material which, in the judgment of the forest officer, does not conform to the specifications of the purchase order should be segregated and held intact pending final disposition.
2. Vendor should be notified of the situation and permitted either to accept the findings of the forest officer or to secure reinspection from the lumber manufacturer's association having sponsorship of the grading rules for the wood involved. A reasonable time should be allowed the vendor for making necessary arrangements.
3. The cost of the reinspection should be borne by the vendor, if material in question does not meet the stipulated specifications. If reinspection establishes that delivered material does meet the specifications under which purchase was made, additional cost should be paid by consignee.

## TITLE 6300 - PROCUREMENT MANAGEMENT

6345 - MATERIAL TESTING FACILITIES

6345.1 - Forest Service Testing Facilities. The Forest Products Laboratory at Madison, Wisconsin, is equipped to make tests of supplies principally connected with wood utilization, such tests including wood preservatives, paints, glue, etc., besides wood products. The facilities of this Laboratory are used principally for research. It will, when it can, cooperate with other units of the Forest Service and assist purchasing officers in making acceptance tests and furnishing reports of results in cases where tests form a part of the regular investigative program, or conform to the class of tests which may be accepted on a cooperative basis.

Where factory or mill inspection is to be made and the place of inspection is convenient to another region of the Forest Service, an inspector from the nearby region may be available, and inquiry should be made of the regional forester.

The Washington office maintains a laboratory for the inspection and testing of radio and telephone instruments, supplies, and equipment, and its facilities should be used when such classes of supplies are involved. The Missoula Equipment Development Center, R-1, has facilities for testing parachutes, parachute materials, and textile materials such as canvas, packsacks, and sleeping bags.

The Arcadia Equipment Development Center, R-5, will provide inspection and testing services under special circumstances and for special items such as firehose, fabricated fire and other mechanical equipment, and aeronautical equipment. These services ordinarily are furnished on a reimbursable basis.

6345.2 - Other Government Testing Facilities. The General Services Administration issues from time to time a Directory of U. S. Government Inspection Services and Testing Laboratories. It contains in one volume information concerning the major inspection offices and testing laboratories of the Federal Government. The Directory will aid in determining the facility best equipped, staffed, and geographically located to perform the desired service most economically; it should be used by all agencies when they require inspection or testing assistance. Copies may be obtained from the \*-Office of Administration, Printing and Publications Branch, GSA Regional Office Building, Washington 25, D. C.

1. Inspection and Testing Services by GSA. Arrangements may be made with the nearest GSA Regional Quality Control Division for inspection and testing services and for technical advice required for acceptance of purchased materials. -\*



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2. Inspection and Testing Services by Other Agencies. General Services Administration regulation I-VI-404-.06 provides that agencies may, without requiring reimbursement or transfer of funds, perform for other Federal agencies inspection and testing services related to the procurement of personal property. The determination whether or not to require reimbursement for services rendered rests with the agency performing the service and any reimbursements therefor shall be made in accordance with applicable laws and regulations. In making such determinations, agencies should be guided by the following policy:

- a. Exchange, to the extent practicable, inspection and testing services on a reimbursement in-kind basis without requiring cross-billing.
- b. Perform without reimbursement inspection and testing services of any value where resident or itinerant inspectors are available and where the additional workload will not necessitate personnel increases.
- c. Waive collecting reimbursement from other Federal agencies where the administrative cost of collecting will equal or exceed the cost of the services performed. (Costs of less than \$100 under a single contract or purchase may be considered a reasonable guide in such cases.)

6345.3 - \*-Use of Private Inspection, Testing, and Grading Services. Such services required for determining acceptability of purchased materials may be purchased only where it has been determined that there is no Government facility reasonably available for inspection, testing, or grading and these services require the application of scientific principles or specialized techniques and equipment without direct Government supervision. Generally, payment for these services should not be based on time required to perform the services but on reports, results, or other units of work. Where there is doubt regarding the propriety of utilizing a private organization's services, the matter should be referred to the Office of Plant and Operations for decision (FSH 6316.3). -\*

6346 - METHODS OF TESTING MATERIAL

1. Field Testing. Specifications for many tools and pieces of equipment used by the Forest Service require that certain performance tests under actual working conditions be met. All such tests should be fair and impartial; and the bidder or vendor should be fully informed of the test, what it will embrace, how it will be made, and time and place of test. After completion he is entitled to know the results of the tests.

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2. Sample Testing. Where laboratory or performance tests are to be made of samples submitted by bidders, the number and size of samples required, the character of the tests, and the apparatus to be used should be set out in the bid specifications, also the method of obtaining samples.

Where tests are made at the factory, a representative number of articles from each lot should be inspected. In the case of tools, for instance, an inspection of 1 out of every 10 or 12 should be a satisfactory inspection. In the case of paint, each batch will differ and should be inspected. Inspection at destination is preferable to having bidders submit samples, because the sample submitted, especially in commodities such as paint, would be representative of only the particular batch and the shipment might differ materially. If, however, inspection and test is made at destination by selecting for inspection a representative number of samples from the entire shipment, a fairly accurate cross-section analysis of the entire shipment can be obtained.

## TITLE 6300 - PROCUREMENT MANAGEMENT

### CHAPTER 6350 - TRANSPORTATION OF PROPERTY

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**\*Abbreviations:**

M - Manual

H - Handbook

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## TITLE 6300 - PROCUREMENT MANAGEMENT

## CHAPTER 6350 - TRANSPORTATION OF PROPERTY

6351 - TRANSPORTATION AUTHORITY. Section 201(a) of the Federal Property and Administrative Services Act of 1949, as amended (40 U. S. C. 481), provides that the Administrator of the General Services Administration:

shall, in respect of executive agencies, and to the extent that he determines that so doing is advantageous to the Government in terms of economy, efficiency, or service, and with due regard to the program activities of the agencies concerned,

(1) prescribe policies and methods of procurement and supply of personal property and nonpersonal services, including related functions such as transportation and traffic management, and,

(2) with respect to transportation and other public utility services for the use of executive agencies, represent such agencies in negotiations with carriers and other public utilities and in proceedings involving carriers or other public utilities before Federal and State regulatory bodies.

The policies and procedures prescribed herein are in accordance with transportation and traffic management policies and regulations prescribed by GSA under the provisions of the act, as amended.

6352 - TRANSPORTATION--DEFINITIONS

1. Transportation. Transportation is the carrying of persons or things from place to place. As used here, the term transportation is restricted to systems and methods most commonly used in transporting "things."

2. Commonly Used Terms. Certain commonly used transportation terms which occur frequently throughout this chapter are:

Arrival Notice. A notice, furnished to the consignee, of the arrival of freight.

Carload. A quantity of freight required for the application of a carload rate, or a car loaded to its carrying capacity.

Class Rate. A rate applicable to a class rating to which articles are assigned in the Consolidated Freight Classification or other classification.

Commercial Rate. The normal rate available to the general public for application to a freight movement.



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Commodity Rate. A rate applicable to a specific article described or named in the tariff containing the rate.

Common Carrier. A transportation company engaged in the business of transporting property for the general public for compensation.

Consignee. The person to whom articles are shipped.

Consignor. The person by whom articles are shipped.

Consolidated Freight Classification. A publication containing a list of articles and the classes to which they are assigned for the purpose of applying class rates, together with governing rules and regulations. (This volume is published by the Consolidated Freight Classification Committee, 202 Chicago Union Station, Chicago, Illinois \* \* \*.)

Custom House. The Government office where duties, tolls, or imposts placed on imports or exports are paid, or where goods are entered or cleared.

Delivering Carrier. The transportation line by which a shipment is delivered to the consignee.

Dutiable. Subject to a duty, as imported goods.

Embargo. A restriction on the acceptance and handling of traffic by common carriers.

F. A. S. "Free alongside," commonly used in connection with water shipments, as: free alongside vessel--delivered to dock.

F. O. B. "Free on board" as, in carload shipments, loaded on cars and in less than carload shipments, delivered to freight stations.

Freight House. The station facility of a transportation line for receiving and delivering freight.

Initial Carrier. The transportation line to which a shipment is tendered by the shipper or consignor at a point of origin.

Initials; Car. Initials used to signify the name of the railroad car owner.

Interstate. Transportation between States.

Interstate Commerce Act. An act of Congress regulating the practices, rates, and rules of rail and motor transportation lines, water carriers, and freight forwarders engaged in handling interstate traffic.

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Intrastate: Transportation wholly within one State.

K.D.: "Knocked down," a term denoting that an article is partially or entirely taken apart (not set up).

Land Grant: Land granted or given by the Government to a transportation line (rail carrier).

Land-Grant Rate: The net rate resultant of a deduction of land-grant percentages from the commercial rate.

Less-Than-Carload: A quantity of freight less than that required for the application of a carload rate at the minimum weight applicable.

Lighterage: The charge made for hauling freight on lighters or barges.

N.O.I.B.N.: "Not otherwise indexed by name," refers to the classification of articles for rate-application purposes.

Route: The course or direction that a shipment moves, or the transportation line or lines over which a shipment moves.

Special Rate: A freight rate which is less than the normal commercial rate applicable to a freight movement and available to the public generally. A "special rate" is usually the result of negotiations under section 22 of the Interstate Commerce Act.

S.U.: "Set up," a term denoting that an article is put together in its complete state (not knocked down).

Switching Charge: The charge made for moving cars within switching limits.

Tariff: A schedule of rates charged by transportation lines, together with governing rules and regulations.

Team-Track: A track on which freight cars are placed for the use of the public in loading or unloading freight.

Through Rate: A rate which applies from point of origin through to destination.

Through Route: A combination of transportation lines in sequence over which a shipment moves from point of origin to destination.

**6353 - METHODS OF TRANSPORTATION.** In transporting articles from one point to another, one of the following methods is normally

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used: (1) mailing under Government frank; (2) parcel post; (3) Government-owned truck; (4) common-carrier rail, water, or truck service under published freight rates; (5) railway express; (6) air express. The means of transportation listed above are those most commonly employed, but circumstances may make it advisable or necessary to solicit competitive bids for transportation service because of certain local drayage requirements, or the absence of regulated traffic rates makes advertising the only means of developing what the transportation cost will be, as in the case of some intra-state motor-van hauls. An additional means of transportation available in some localities is the truck service which may be obtained under the terms and provisions of Federal Supply Service drayage contracts.

6353.1 - Small Shipments--Freight. Ordinarily freight charges are established on a 100-pound weight basis. Therefore, every effort should be made to avoid small freight shipments of less than 100 pounds by consolidating shipments, establishing shipping schedules, or using other shipping methods when the cost would be less than by freight. In determining whether to use freight or other shipping methods, the cost of processing Government bills of lading should be considered. The average minimum cost of processing Government bills of lading, including issuance and final disposition, has been determined by a Federal Supply Service study to be \$4.00 per document. As a general guide, this cost should be used in determining relative costs of shipment, particularly where parcel post may be used, and the use of a Government bill of lading avoided.

6353.11 - Shipments by Vendors. As a rule, small purchases should be made at "destination" prices. Where this is not possible, arrangements may be made to have the vendor ship the items prepaid and include the shipping charge on his invoice as a separate item. Provision must be made for showing the parcel post weight and zone on the invoice, or attaching a copy of the prepaid freight bill to it. Wording similar to the following is suggested for the purchase document:

Ship via \_\_\_\_\_ and include shipping charge on your invoice as a separate item showing the weight, rate, and zone for parcel post shipments, or attach a copy of the prepaid freight bill for shipments by common carrier.

Since title to the property in these instances does not generally pass to the Government until delivery at destination, any claim for loss or damage in transit is the responsibility of the vendor.

6353.2 - Government Transportation Facilities

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**6353.21 - Mailing Under Government Frank.** Subject to the postal laws and regulations, any article or package of official matter not exceeding 4 pounds in weight may be forwarded through the mails under the penalty privilege. Material ordinarily mailed as a single package must not be split to avoid payment of postage (39 U.S.C. 321i-321n). See FSH 6250.

**6353.22 - Shipment by Parcel Post.** See FSH 6250.

**6353.23 - Shipment by Government-Owned Trucks**

1. **General.** Under certain conditions, it may be necessary or advantageous to employ the use of Government-owned and -operated trucks for local drayage and for long-distance hauls.

2. **Local Drayage.** Local drayage is usually interpreted as being any haul within a municipality or metropolitan area or between contiguous municipalities or communities. Government-owned trucks should be used when practicable for drayage coming within these boundaries. However, they should not be utilized for drayage to or from freight stations on less-than-carload lots when free pickup or delivery service is allowed. Consignors and consignees may ascertain from the initial carrier at point of origin and from the delivering carrier at destination whether free pickup and delivery service is available. In an emergency, where a Government-owned truck is used for drayage to or from carrier's freight station when free pickup or delivery service is included in the freight rate, notation must be made on the bill of lading that pickup or delivery was made by the Government. This is necessary in order that allowance for the service may be deducted from carrier's transportation charges. In either case, notation must be made in the space provided on the bill of lading as to whether pickup or delivery service was provided by the Government.

3. **Long-Distance Hauls.** Government-owned trucks may be used for a long-distance haul when several shipments may be moved at the same time to a given point or area, and there is at destination a substantial number of shipments to warrant a return load. However, it should be developed that such use, gasoline, wear and tear, and employee's per diem considered, will result in an over-all prorated cost that is lower than, or not in excess of, cost for similar service via a common carrier.

**6353.3 - Drayage Contracts -- Federal Supply Service**

1. **General.** Federal Supply Service usually enters into contracts with draymen in various cities where heavy Federal drayage requirements exist. Because these contracts change frequently, they are not listed here. Pertinent information may be obtained from Supply Centers of the Federal Supply Service.

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2. Use. The contracts are usually worded in such a way as to make the service available to all agencies. Packing and crating services are frequently included in the contracts.

3. Ordering Service. When ordering services under these contracts, use AD-38, Purchase Order.

6353.4 - Open Market Purchase of Transportation

1. Conditions Applicable. Subject to the applicable open-market purchase limitation, local drayage services may be negotiated for as open-market purchases when:

- a. Free pickup and delivery service is not included in common carriers' published tariff rates.
- b. Consignee's delivery or consignor's shipping point is beyond the corporate limits of free pickup and delivery service.
- c. Service by Government-owned trucks is not available.
- d. There are no existing Federal Supply Service drayage contracts.

2. Price Inquiry. When making open-market purchases of local transportation, quotations should be obtained, where practicable, from a reasonable number of local draymen. Such quotations should be recorded and filed with the file copies of the resulting vouchers, or in the purchase-order or bill-of-lading file.

3. Recurrent Needs. When it appears that requirements will be recurring over a definite period of time, and there are no existing facilities for drayage, contracts for such services should be made on SF-33 after the solicitation of competitive bids.

6353.5 - Common Carrier Transportation--Rail, Water, and Truck Service Under Published Tariffs6353.51 - Bulk Common Carrier Shipments6353.51a - Less-Than-Carload Shipments

1. Definition. A less-than-carload shipment is tendered to the carrier with the understanding that it will be placed in a car with other shipments of the same denomination. The shipping cost for such shipment is, as a general rule, computed by multiplying the shipping weight by the lowest applicable per-hundred-weight rate. However, any shipment weighing less than 100 pounds, except express, will be billed on the basis of 100 pounds.



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2. Rates. There are on file with the Interstate Commerce Commission, rail rates, express rates, motor rates, water-rail rates, and also some all-water rates, the latter applying principally between ports on inland waterways. All other water, or port-to-port rates are filed with the United States Maritime Commission. All kinds of rates, except parcel post which apply only to shipments moving wholly within a State, are filed with State regulatory bodies. Parcel post rates are published by the United States Post Office Department.

3. Computing Transportation Cost

a. Shipments Weighing 100 Pounds or More. Rates are published in cents per 100 pounds, per ton, per cubic foot, and occasionally per car. The transportation cost is based, generally, upon the actual weight or measurement of the shipment multiplied by the actual rate. If the quantity of material is such that it can be shipped cheaper as a carload, the minimum carload weight established on the commodity or article must be considered in the application of the carload rate, even though the actual weight is less. Occasionally, minimum weights apply to less-than-carload shipments in the case of articles which on account of length cannot be loaded through the side door of an ordinary boxcar. Where water transportation is involved, rates are sometimes published in cents per ton of 2,000 pounds or 40 cubic feet, "ship's option," which means that the basis which produces the higher charge must be used.

b. Shipments Weighing Less Than 100 Pounds. In express shipments, the cost is computed from a graduated scale of charges published for each weight in even pounds from 1 to 99. The minimum charge by rail or rail-water is the cost for 100 pounds at the rate applicable to the article shipped when it takes a first-class rating or lower, or for 100 pounds at the first-class rate when rated higher than first-class, but in no case less than \$1. Minimum charges are frequently the same by all water or motor as by rail or rail-water. There are, however, many exceptions, so the minimum charge should be determined in each individual case.

4. Free Pickup and Delivery Service. Free pickup and/or delivery service or an allowance therefor is provided under some common-carrier published tariffs. This is not to be regarded, however, as an absolute rule. Therefore, care should be taken by both consignors and consignees to ascertain whether or not free pickup and delivery service is available. This information can be obtained from the carrier at point of origin and from the delivering carrier at destination.

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a. Purchases F.O.B. Contractor's Shipping Point. When materials or supplies are purchased f.o.b. contractor's shipping point and shipment is made on Government bill of lading, and drayed to the freight station by the contractor or a drayman acting for him, there is no performance of a pickup service by the Government. In such instances, the Government is not entitled to any allowance which may be provided in the carrier's tariff for pickup service.

b. Purchases F.O.B. Destination. On shipments purchased f.o.b. destination, shipped on a commercial bill of lading, and handled from the freight station by Government facilities or by a Government contract drayman at points within the carrier's pickup and delivery limits, and where the tariffs of the carrier expressly provide that the freight charge includes delivery within certain limits, and provide for an allowance to the consignee who makes his own arrangements and performs the service, the delivery allowance belongs to the Government. In such cases, the carrier should be billed for the amount involved.

c. Bill-of-Lading Statements. Government bills of lading are overprinted to include the following statements:

(1) Pickup service at origin \_\_\_\_\_  
insert "was" or "was not"

by the Government or its agent \_\_\_\_\_.  
initials of shipper's agent

(2) Delivery service at destination \_\_\_\_\_  
insert "was" or "was not"

by the Government or its agent \_\_\_\_\_.  
Signature of consignee

Such statements must be signed as indicated, inserting the applicable word or words.

5. Pickup or Delivery by the Railroad at Shipper's Expense. In certain instances the tariffs covering pickup or delivery service provide for the assessment of charges therefor in addition to line-haul charges. Therefore, when pickup or delivery service is not performed by the Government or its agent, but is performed by the carrier in connection with a "less-than-carload" and "any quantity" or a "trap car" shipment, it is important that the bill of lading show whether the service was performed by the carrier at the request of the shipper or the consignee. For such shipments, this information is to be added to every bill of lading. The information should be in the form of an endorsement and may be added by rubber stamp.

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The following wording is suggested for one rubber stamp for use in the space immediately above "pickup service at origin was or was not by the Government or its agent":

"Pickup service at origin \_\_\_\_\_ requested of  
insert 'was' or 'was not'  
and \_\_\_\_\_ furnished by the railroad."  
'was' or 'was not'

In order to provide the necessary information with respect to delivery, the following rubber stamp should be added to the consignee's certificate of delivery:

"and \_\_\_\_\_ requested of and \_\_\_\_\_  
insert 'was' or 'was not' 'was' or 'was not'  
furnished by the railroad."

By applying these rubber stamps in the manner indicated, the spaces already provided for shipper's agent and consignee to sign may be utilized for the required endorsement. Each statement should be signed by or for the person who ordered the service.

6. "Trap Car" Service. Should it be necessary to request such service (in the Forest Service such a need may seldom occur), the words "trap car" should be substituted for "pickup" in the first endorsement. A trap car is a freight car loaded by the shipper with several less-than-carload shipments. Trap car service, where available, provides one type of carrier pickup service which may offer advantages to a shipper who has a large volume of LCL shipments and sidetrack facilities for the placing and loading of such a car. This service, however, is generally more advantageous to and more widely used by industry than the Government.

7. Storage Charges Assessed by Common Carriers. A storage charge is a charge made on property stored by the carrier. If, for any reason, an LCL shipment is allowed to remain at carrier's freight station at the delivery point for a time in excess of the so-called free time allowed for holding freight, there accrues against the freight bill an additional charge which is known as storage charge.

Free Time. In general, the free time allowed at the freight station on less-than-carload inbound freight is 5 days, computed from the first 7 a. m. after the notice of arrival is sent to the consignee. To this rule there are certain exceptions, dependent on the class of commodity shipped and individual carrier's tariffs. Because the application of storage rules and charges is somewhat flexible, employees receiving freight shipments should familiarize themselves

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with the storage charges and rules applicable at the local stations so that freight may be removed promptly and no additional expense incurred. With the expiration of the free time, the carrier's liability becomes that of a warehouseman and, as such, includes only the exercise of reasonable care and attention for the prevention of loss or damage.

6353.51b - Carload Shipments

1. Minimum Weights. In order to assure gross revenue returns from the use of a freight car, there have been established minimum weights applicable to each type of commodity. Each carload shipment must be billed on at least the minimum weight applicable to the goods being shipped.

2. Carload Rates. The minimum weight is considered a part of the carload rate in that one is not applicable without the other. The rate applicable to carload movements is always less than that applicable to less-than-carload shipments. This is explained as follows: If the car revenue is assured through application of an established minimum weight, it costs less to handle carload than LCL lots. Freight in carload lots is loaded by the shipper and unloaded by the consignee, and moves from point of origin to destination without a transfer en route. Freight in LCL lots is handled through freight stations, and if it is moved through several junctions or transfer points, the extra expense of transferring is involved.

3. Computation of Freight Cargoes. The minimum weight must be considered in the application of a carload rate even though the actual weight of the goods is less than the minimum weight applicable to that rate. For example, 10,000 pounds of household goods is to move from Washington, D. C., to Laramie, Wyoming. The carload rate is \$2.96 per cwt., and the established minimum weight is 12,000 pounds. The LCL rate is \$4.23 per cwt. to be computed on actual weight. Computations are made as follows:

<u>Carload Shipment</u>	<u>Less-Than-Carload Shipment</u>
12,000 lbs. at \$2.96 per cwt.	10,000 lbs. at \$4.23 per cwt.
= \$355.20	= \$423.00

In this case, it is more economical to ship at the carload rate even though there is included 2,000 pounds of dead weight. (Dead weight is the difference between the actual weight of goods shipped and the minimum carload weight applicable.) When the weight of the goods equals or exceeds the minimum weight applicable, charges are based on the actual weight.

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Actual or estimated weights should be shown on the bill of lading rather than carload minimum weights. The absence of a reference to carload minimum weight will not deprive the shipper of the benefit of the carload rate as carriers are obliged to bill on the basis of the lowest applicable rate.

#### 4. Reconsignments and Diversions

a. Definition. Although these terms are often interpreted as being synonymous in meaning, for the purpose of clarification, they are defined individually as follows:

(1) A diversion is usually a change made in the route of a shipment in transit.

(2) A reconsignment is usually a change made in the destination of a consignment after its arrival at the original billed destination.

b. Directions for Ordering. If it becomes necessary to order the diversion or reconsignment of a car for reasons which were not apparent at the time shipment was made, procedures for ordering such diversion or reconsignment and the conditions applicable thereto are outlined below:

(1) Diversion of Shipment in Transit. A request confirmed in writing containing a complete description of the shipment, date shipped, shipper, shipping point, consignee, destination, car number, bill-of-lading number, and clear, definite instructions as to changes desired, should be made on the local agent at point of shipment. If a change in destination is requested, and it is known that such change will not result in a back-haul, this statement should be added to the instructions: "If possible, please protect through-rate from point of origin to new destination."

(2) Reconsignment of Shipment That has Reached Original Destination. A request confirmed in writing, as outlined above, should be made as promptly as possible on the agent of the carrier in possession of the shipment at destination, as carriers allow only 24 hours free time in which to accomplish a reconsignment.

(3) Bill-of-Lading Notation. Whoever has the proper authority (the consignor or consignee), and under such authority orders a diversion or reconsignment, should secure the original bill of lading, make thereon proper notation and certification of the changes, and forward it with a full report of the transaction to the new consignee.



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c. Rules and Charges. Because the rules and charges for diversions and reconsignments depend wholly on the type of service involved, specific rules and charges cannot be given here for permanent reference.

5. Demurrage

a. Definition. Demurrage is that charge which accrues when a freight car is held by a shipper at the point of origin, or by the consignee at destination, for a period of time in excess of the so-called free time allowed. (Storage refers to property while demurrage applies to freight cars, loaded or not loaded.)

b. Application. The free time allowed for loading or unloading is usually ample. However, cars should be loaded and unloaded as quickly as possible in order to avoid demurrage. Demurrage may be applied in two ways.

(1) Straight Demurrage. Under this rule, there is provided an allowance of a definite period called free time for the loading or unloading of cars and a definite charge by the carrier for each car held beyond that period. The free time allowed for the loading or unloading of cars is usually 48 hours, computed from the first 7 a.m. after placement, Sundays and legal holidays excepted. For each of the first 4 days that a car is held by the consignor or consignee beyond the free time, demurrage is assessed at a fixed rate per day, and for each day beyond 4, at a fixed rate that is considerably in excess of the rate for each day up to 4.

(2) Average Demurrage. Under the average demurrage rules, an agreement can be made between a railroad and a shipper or consignee whereby there is established a debit and credit plan. It is set up as follows:

The consignee or shipper is allowed one credit for each car released within the first 24 hours of free time. He is assessed one debit per car per day up to 4 days on each car held after the first 48 hours. At the end of the calendar month, the total number of credits is deducted from the total number of debits. The remaining debits are charged for at a fixed rate per debit. If the credits equal or are in excess of the debits, no charge is made.

Arrangements for average-demurrage agreements at certain stations should be made only when the number of cars normally received or forwarded is sufficient to warrant the execution of such agreements.

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c. Rules. The demurrage rules outlined above are in accordance with the National Car Demurrage Rules and Charges, and are practically uniform. There may be exceptions published by individual transportation lines applicable to some commodities, but the major portion of Forest Service shipments should not be affected by these exceptions. Information pertaining to demurrage rules and charges should be obtained from local railroad agents.

6. Transit Privileges

a. Definition. Some tariffs provide that carload shipments may be granted stopover privileges in transit for numerous purposes as circumstances may require. For example, carloads of rough lumber often move partially over a route to a point where they are unloaded, creosoted or treated, reloaded and moved on to final destination; noncompressed cotton frequently is compressed in bales in transit; numerous commodities are stored in warehouses in transit until such time as it is practicable to move them on to final destination; and one of the most common transit privileges is that granted for partial loading or unloading of freight.

b. Reasons for Transit Privileges. In providing for transit privileges, the tariff authorities have taken into consideration all phases of commercial and competitive interests with primary regard for the source of supply of raw materials with relation to the proximity of the manufacturing or processing point and the consumer demands.

c. Charges. The charges for transit privileges are varied and depend wholly on the commodity shipped, the route of movement, and the service performed. The assessment may be a flat charge per car or a charge per hundred weight, and normally is separate and distinct from the through transportation rate. Information relative to existing transit rates and privileges may be obtained from local railroad agents.

d. Transit Bills of Lading. See FSH 6355.22 for instructions relative to the U. S. Government Transit Bill of Lading forms.

7. Reports of Carload and Truckload Shipments. Regions shall furnish direct to the Chief's office reports of common carrier shipments in the following categories on which freight charges are borne and paid (direct to the carrier) by the Government:

a. Ten or more carloads or truckloads of the same commodity, or ten or more carloads or truckloads of mixed commodities from the same origin to the same destination, moving

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by common carrier within a calendar month. In reporting, list commodities in general terms: subsistence supplies, office equipment, stationery and other administrative supplies, building material, etc.

b. Like shipments of lesser quantities, if the total number of carloads or truckloads shipped, or schedules for shipment, averages 5 or more carloads or truckloads per month during a period of 3 or more consecutive months.

Reports shall be submitted concurrent with or immediately following each shipment, or upon the establishment of a shipping schedule under item b above. Each report shall include the following information when available: bill of lading number (if commercial, so indicate) and date; car initials and numbers; origin and destination; commodity; net weight of each carload or truckload; and routing. If convenient, this information may be supplied by submission of copies of bills of lading.

6353.52 - Description and Classification of Articles Being Transported. Descriptions of articles should conform as nearly as possible to those set forth in the "Consolidated Freight Classification" and carriers' tariffs. Assuming, however, that copies of current classifications and tariffs are not always available for the use of shippers, if employees charged with the responsibility of preparing a Government bill of lading will describe the article or articles as fully and accurately as possible, outlining the type of packing or package that is boxed, crated, set up or knocked down, carriers should be able to classify the shipment for proper assessment of transportation charges without opening the packages for inspection in order to determine lawful ratings. Although shippers should make every effort to obtain the lowest classification of an article, in no case should this cause them intentionally to misrepresent, as to classification description, the article or articles which they are shipping. Such voluntary misrepresentation holds the shipper liable to fine or imprisonment, or both.

6353.53 - Packing and Marking of Articles Being Transported

1. Protection From Loss or Damage. A shipper owes it to himself, to the consignee, and to the carrier who is transporting his goods to pack and mark his shipment in such a way as to safeguard against loss or damage in transit. Carriers are exempt from liability for loss or damage when it can be proved that such loss or damage has occurred by reason of improper packing or loading of carload shipments, and improper packing or marking of less-than-carload shipments, on the part of the shipper.

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2. Packing. Merchandise in LCL shipments receives numerous handlings en route, and packages, containers, crates, etc., should be of substantial construction and material. The governing rule should be "adequate protection of articles shipped at the minimum cost for maximum safety."

a. Packing Rules. In general, packages must comply with the terms of Rules 40 and 41 of the "Consolidated Freight Classification." Attention is also invited to Rule 5, which states, in part, "Articles tendered for transportation will be refused for shipment unless in such condition and so prepared for shipment as to render transportation reasonably safe and practicable."

Usually, articles of different classes should not be packed in one container. In such cases, as will be noted in "Consolidated Freight Classification" Rule 12, Section 3, quoted below, transportation charges are assessed on the basis of the highest rated article in the package. "The charge for a package containing articles classed or rated differently shall be at the rating or rate provided for the highest classed or rated article in the package, and on shipments subject to carload rating or rate, the highest carload minimum weight provided for any article in the package will apply. All the articles need not be specified on shipping order or bill of lading, but on LCL shipments only one of the articles taking highest rating or rate, and on CL shipments one of the articles taking highest rating or rate, and one of the articles taking highest CL minimum weight; in such instances the following notation must also appear on shipping order and bill of lading: 'And other articles classified the same or lower.' "

b. Packing Advice. Bearing in mind the above, if the shipper has any doubt as to packing requirements for the shipment he is preparing, he has only to contact the railroad agent at the station from which his shipment will originate for advice and information. Shippers are also referred to Technical Bulletin 171, USDA, "Principles of Box and Crate Construction." A copy may be obtained at a nominal fee from the Superintendent of Documents, Government Printing Office, Washington, D. C.

3. Marking. Every package, bundle, or piece of an LCL shipment must be plainly, durably, and legibly marked as to consignee's name, address, and bill-of-lading destination, except when the shipment weighs or is billed at 6,000 pounds or more. The general rules appear in Rule 6 of the "Consolidated Freight Classification." Packages containing fragile articles or articles packed in glass or other ware must be marked "Fragile--Handle With Care," or similar precautionary marks. Shipments consigned to a designation which



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bears the same name as another place in the same State, must show the name of the county. Shipments consigned to a place not located on the line of a carrier must be marked with the name of the station at which the consignee will accept delivery. All marks should agree with those shown in the bill of lading.

6353.54 - Tracing Lost Shipments

1. Justification. Carriers should not be requested to trace a shipment without allowing a reasonable time for the shipment to reach its destination.

2. Directions. Requests to trace freight should be made on the agent of the carrier originating the shipment. Such requests should include complete information as to bill-of-lading number, date, consignor, consignee, contents, etc., and, if oral, should be immediately confirmed in writing.

6353.55 - Loss or Damage in Transit

1. Carrier's Liability. The uniform commercial bill of lading provides that carriers are exempted from liability for loss or damage caused by the act of God, the public enemy, the authority of law, or the act or default of the shipper or owner, or for natural shrinkage. When the shipment moves wholly or partly by water, the carrier's liability is more limited--see Water Shipments below. Subject to the above liability limitations, claims can be made against common carriers for any loss or damage to property while such property was in possession of the carrier at origin point, in transit, or during the free time allowed for consignee's removal at the destination station.

2. Market Value or Invoice Cost--Released Value. The compensation for loss or damage is determined by the market value or invoice cost of the article shipped, recoverable in whole in case of total loss, or in part in proportion to the damage sustained. Where goods have no established market value by reason of being used, or second-hand, or new with fluctuating value, such as wearing apparel, household goods, etc., the classification and carriers' tariffs provide for a released-valuation scale upon which the transportation rates are established. In such instances, the scale of the valuation (a fixed amount on which carriers' liability is based) graduates upward and in accordance therewith the transportation rates are increased.

a. Example of Released Value. The "Consolidated Freight Classification" provides that "Rugs, NOIBN, value declared in



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writing by the shipper" are assessed freight rates applicable to the agreed released value of the property as follows:

		<u>Class</u>
If not exceeding \$125 per 100 pounds		1
If exceeding \$125 per 100 pounds but not exceeding \$200	1-1/2 times	1
If exceeding \$200 per 100 pounds but not exceeding \$300	2 times	1
If exceeding \$300 per 100 pounds	3 times	1

Under the Interstate Commerce Act (49 U.S.C. 20 (11) ) the valuation as declared or released in writing in a bill of lading is intended to limit the extent of carrier's liability and consignee's recovery to an amount not in excess of the value so declared or released. Forest Service employees shipping Government property would seldom, if ever, be concerned with a shipment such as the one cited here, and it is mentioned only to illustrate the extent of a carrier's liability for shipments moving under a released valuation.

b. Government Bill-of-Lading Requirement. As provided on the reverse of the Government bill of lading, Government shipments must be made under rates based on the lowest released value unless there is a notation placed on the face of the bill of lading to the contrary. See Released Valuation of this section.

c. Submission of Invoice. When the invoice price determines the actual loss, a certified true copy of such invoice should be attached to the original Government bill of lading when such bill of lading has not already been surrendered to the delivering carrier. Otherwise, a certified true copy of the invoice should be submitted as an attachment to the instituted claim for loss or damage.

3. Reporting Loss or Damage Evident at Time of Delivery. The consignee, upon arrival of the shipment, should make a careful check to ascertain any apparent loss or damage, and report it at that time on the reverse of the bill of lading (and extra copies) in the manner and form provided by the instructions thereon.

4. Reporting Concealed Loss or Damage

a. Carrier's Inspection. If loss or damage is discovered after the Government bill of lading has been certified and

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surrendered, the delivering carrier should be notified immediately and shipment held by the consignee in the condition in which it arrived in order that the carrier's agent may make a proper inspection and tally. Such inspection and tally, and all pertinent information are reported on the carrier's standard form for reporting loss or damage discovered after delivery of freight.

b. Consignee's Inspection. In case carrier's agent is unable to make an inspection, it is probable that the consignee will be requested by the carrier to execute the Inspection Report Form, or Carrier's Concealed Damage Form (furnished by the agent of the carrier), and the consignee's inspection will be accepted as a substitute for carrier's inspection. Either form, when completed, is forwarded in addition to and in support of the written claim. All claims are made on the agent of the delivering carrier at destination, or direct to the carrier's freight claim agent, in such manner and form and at such time as individual agency requirements prescribe.

5. Deletion of Government-Bill-of-Lading Condition 7 by Carrier. Condition 7 of the Government bill of lading provides that in case of loss, damage, or shrinkage in transit, the time limitations contained in section 2(b) of the uniform commercial bill of lading relative to suits and claims do not apply to shipments on Government bills of lading. Section 2 (b) stipulates that claims against the carrier must be filed within 9 months, and suits instituted within 2 years.

a. Comptroller General's Decision. The Comptroller General states that there is no objection to the carrier's deletion of condition 7 if the carrier should definitely refuse otherwise to accept a shipment. However, the striking out of these provisions does not thereby relieve the carrier of any liabilities under the law. He holds, further, that the position of the General Accounting Office in the disposition of claims and accounts must be that, even in the absence of condition 7, the United States is not subject to the limitations in question and, therefore, the deletion of such condition cannot bring the limitation into operation (see 19 Comp. Gen. 537).

b. Policy. Notwithstanding the fact that the carrier's deletion of condition 7 has no effect regarding claims or suits involving Government shipments, every precaution should be taken, and every effort should be made to make early discovery and adjustment of any loss or damage or shrinkage that may occur.

6. Government Losses in Shipment Act. This act provides for reparation to the appropriation affected in case of heavy loss of valuables. "Valuables" as defined under the act are currency, coins,

## TITLE 6300 - PROCUREMENT MANAGEMENT

securities, precious metals and stones, etc., and the act has limited application to Forest Service shipments. Refer to 5 AR 520f for more complete details.

6353.56 - Transportation Rates and Privileges

1. Land-Grant Rail Rates no Longer Applicable to Agriculture Shipments. Section 321, Title 3, Part II of the Transportation Act of 1940 (49 U.S.C. 65), authorized land-grant rail carriers to charge full commercial freight rates for all other Government shipments, provided such rail carriers file releases of any claims against the Government to lands or pertaining to lands. Releases were filed by all affected carriers, and on April 16, 1941, the date on which the last application for release was filed, there became effective full commercial freight rates applicable to the Department's shipments.

Solicitation of Prices--Invitations to Bid. The elimination of land-grant rates brought about the necessity for revising the Department's purchasing procedure, there no longer being, in most cases, any advantage to seeking competition on the basis of advertisements calling for quotations f.o.b. bidder's shipping point, as well as delivered at destination. Accordingly, with some exceptions, the present policy prescribes that advertisements call for destination prices only. In the event it is necessary to solicit prices f.o.b. bidder's shipping point, freight rates necessary to the determination of the low bidder should be obtained in the field from local freight agents.

2. Special Rates and Privileges. Notwithstanding the fact that land-grant privileges have been eliminated, under section 22 of the Interstate Commerce Act ("That nothing in this part shall prevent the carriage, storage, or handling of property, free or at reduced rates for the United States, State or Municipal Governments, . . .") carriers may grant reduced rates or special privileges to apply to the shipment of Government property. Reduced rates or special privileges are usually obtained through negotiations with transportation companies or their agents. Negotiations may be in the form of proposals to amend or publish tariffs to provide the rates or services desired, or to make such rates or services available without publication, in accordance with section 22 of the Interstate Commerce Act or other pertinent Federal law relating to interstate movements, or comparable provisions of State regulatory laws governing intrastate movements, to the extent that such laws permit the carriers to transport property for the Government free or at reduced rates. Comparable provisions are not included in regulatory laws of every State.

a. Authority to Negotiate With Transportation Companies. Through delegation by the General Services Administrator of his authority to negotiate with transportation companies under

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section 201(a)(4) of the Federal Property and Administrative Services Act of 1949, as amended, executive agencies, either before or after the movement, may initiate and pursue negotiations with transportation companies for freight rates and services applicable to individual movements of property by such agencies when:

(1) The quantity of property involved is 100 short tons or less, or

(2) The quantity of property involved is over 100 short tons, but in no case more than 200 short tons, and the movement is of such an emergency nature that time would not permit reference to the GSA prior to shipment.

Note: This does not include authority to negotiate directly with carriers on movements of property which individually are within the above limitations if they are part of a larger movement which, in the aggregate, exceeds the limitations, even though the individual movements take place on different dates under separate bills of lading. All such cases must be referred to the GSA as outlined in item b above.

This authority should be utilized to eliminate excessive costs of transportation resulting from inequities in the application to Government shipments of published rates, classifications, rules or regulations, and to make available to the Government special services not authorized in tariffs. Agencies of the Department which have occasion to exercise the authority provided herein may, if they desire, refer proposed negotiations to the Production and Marketing Administration for handling.

b. Negotiations With Transportation Companies by GSA. Unless otherwise authorized, proposals for negotiations involving shipments of property in excess of the maxima outlined in item a above are required to be submitted to the Traffic Management Division, Federal Supply Service, General Services Administration, Washington 25, D. C., as far in advance of the prospective shipping date as circumstances will permit, for negotiation or such other appropriate action as may be warranted. The GSA has indicated that emergency movements of property will not be impeded by this requirement, provided that all facts related to such movements are communicated, through usual agency channels, to the GSA by telephone or telegraph.

c. Reporting Negotiations. Unless otherwise authorized, negotiations with transportation companies shall be reported direct to the Traffic Management Division, Federal Supply Service, General Services Administration, Washington 25, D. C., through the Chief's office, as follows:

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(1) Within 24 hours after negotiation is initiated, a report shall be submitted by memorandum in the format prescribed by exhibit 1.

(2) Upon conclusion of negotiation, whether successful in whole or in part, or unsuccessful, a report shall be submitted by memorandum in the format prescribed by exhibit 2.

(3) To carry out the purposes outlined in item d immediately below, one copy of each offer resulting from negotiation with a transportation company or its agent shall be forwarded to the GSA. A signed copy of any quotation or offer should also be forwarded promptly to the General Accounting Office.

d. Register and Index of Special Rates and Services. The GSA maintains a central register and index of special offers made by common carriers to transport property for the Government, or to perform related services, free or at rates lower than the published tariff rates. The register contains copies of offers submitted by the various Federal agencies. An index to the register is prepared and made available by the GSA to enable one agency to ascertain whether another agency has received an offer of certain special rates or services and to obtain for itself similar benefits. The index contains instructions as to use. New offers or amendments or cancellations of those offers carried in the original index are published in supplements to the index. Field offices will submit their requirements for copies of the index through channels to the Office of Budget and Finance of the Department. Questions relative to particular offers contained in the index should be directed, through channels, to the Traffic Management Division, Federal Supply Service, General Services Administration, 7th and D Streets, S. W., Washington 25, D. C.



## TITLE 6300 - PROCUREMENT MANAGEMENT

Exhibit 1

OPTIONAL FORM NO. 10

UNITED STATES GOVERNMENT

*Memorandum*

TO : General Services Administration  
 Federal Supply Service  
 Washington 25, D. C.  
 Attn: Traffic Management Division

FROM : (Enter here the name of the reporting agency and the  
 name, title, and address of appropriate agency official. )

DATE: \_\_\_\_\_

SUBJECT: Report of Traffic Negotiation Initiated With Carrier

This itemized report is submitted in conformity with General Services Administration Personal Property Management Regulation No. 20, dated May 7, 1951, "Transportation and Traffic Management."

1. Reference No.: (Enter a reference or file number by which all subsequent communications regarding the negotiation shall be identified.)
2. Type of Negotiation: (Enter "Section 22," "Tariff," or "Contract," depending upon whether the negotiation is: (1) under section 22 of the Interstate Commerce Act or comparable provision of a State carrier regulatory law; (2) on a matter of tariff; or (3) a matter of contract agreement.)
3. Negotiation Initiated:
  - a. (Enter the applicable word "Before" or "After.")  
 \_\_\_\_\_ shipment.
  - b. (Enter the applicable method, that is, "Letter," "Telegram," "Telephone," or "Personal contact.")  
 \_\_\_\_\_
4. Negotiation with: (Enter the name of the carrier or bureau with which negotiations are being conducted.)
5. Commodity or Service Involved: (Enter the name of the commodity or describe the service involved in the negotiation.)

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Exhibit 1--Continued6. Amount of Traffic Involved:

- a. (Enter "Estimated" or "Actual," whichever is applicable.)
- b. (Enter number of short tons.)

7. Negotiation Applicable to Traffic Movement:

Beginning \_\_\_\_\_, 19\_\_.

Ending \_\_\_\_\_, 19\_\_.

(Give the dates on and between which traffic subject to the negotiation is to move. In some cases, the negotiation may apply to all movement of the subject traffic after a certain date, in which case the ending date would be "Indefinite.")

8. Purpose of Negotiation: (Under this heading enter: "To establish or adjust classification rating"; "To establish or adjust rates"; "To equalize costs via competing mode of transport;" or "Service adjustment," whichever is applicable.)
9. Area, Territory, or Origin-Destination Involved: (Under this heading give the area or territory within which the subject traffic will move or the points (origin-destination) between which it will move--whichever is applicable.)
10. Present Rate or Service: (Under this heading give existing rate or service from which adjustment is requested.)
11. Basis for Decision To Negotiate: (Under this heading give a full explanation and justification of the reasons for the decision to enter into negotiations with the carrier on the subject traffic.)
12. Proposed Adjustment: (Under this heading give a full description or statement of the adjustment sought by the negotiations.)

## TITLE 6300 - PROCUREMENT MANAGEMENT

Exhibit 2

OPTIONAL FORM NO. 10

UNITED STATES GOVERNMENT

*Memorandum*

TO : General Services Administration  
Federal Supply Service  
Washington 25, D. C.  
Attn: Traffic Management Division

FROM : (Enter here the name of the reporting agency and the  
name, title, and address of the appropriate agency  
official.)

SUBJECT: Report of Traffic Negotiation Concluded With Carrier

DATE: \_\_\_\_\_

This report on the results of negotiations with carriers is submitted in conformity with General Services Administration Personal Property Management Regulation No. 20, dated May 7, 1951, subject, "Transportation and Traffic Management."

1. Reference No.: (Enter the reference number assigned to the initial report of this traffic negotiation.)
2. Conclusion of Negotiation: (Enter whichever is applicable-- "Disapproved," "Approved," or "Approved in parts," giving details of the extent of approval.)

## TITLE 6300 - PROCUREMENT MANAGEMENT

3. Motor-Carrier Rates

a. Common Carrier. Section 321a, title III, part II of the Transportation Act of 1940 (49 U. S. C. 65), provides:

That Section 3709, Revised Statutes (41 U. S. C. 5) shall not hereafter be construed as requiring advertising for bids in connection with the procurement of transportation services when the services required can be procured from any common carrier lawfully operating in the territory where such services are to be performed.

b. Contract Carrier. When it appears that lower rates may be obtained from contract motor carriers, particularly on van movements, bids may be solicited and contracts awarded. The term contract carrier, as used here, means one which, under individual contracts or agreements, engages in the transportation of property, and does not operate under published tariffs.

c. Needs for Rates and Services in the Field. Rates or other traffic information needed by Forest Service field units may be obtained from local carriers or from GSA regional offices, whichever is more readily available or practicable as a source of information.

4. Obligation of Funds. To have funds available for transportation, obligate an amount sufficient to cover the transportation charge for each bill of lading or purchase order issued. An estimate of transportation cost, rather than an accurate computation based on actual rates, is sufficient, and it is recommended that such estimates be based on figures from previous shipments or on information from local carrier rather than from a detailed research into freight or express tariff files.

5. Refrigeration Charges. In shipping perishable commodities (which category may include other than food products), consideration should be given to providing certain protective services such as refrigeration or heating. The cost of these services will be in addition to the transportation cost and, if to be provided, must be included in the estimate. Information regarding these charges and the conditions applicable may be obtained from local railroad agents.

6353. 57 - Railway, Air Express, and Water Shipments

1. Policy. Railway express should not be used unless as cheap as, and more convenient than, mail, where mail is practicable, nor

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substituted for freight unless the faster movement offers a real advantage, or unless the express rate is less than the minimum freight charge.

Because transportation via air express costs so much more than the available postal, freight, or railway express services, shipment should be made by that method only when it has been administratively determined that time is the predominating factor.

2. Rates. Railway express rates and charges may be obtained in accordance with the instructions in this code. Rates and charges for air express service may be obtained from local Railway Express Agency offices, or local airports.

3. Released Valuation. In the case of express shipments the shipping officer should show the value of each shipment on the bill of lading and mark it on each package. In order that full advantage may be taken by the Government of the opportunities for economies, shipments should be made at a transportation rate based on the lowest released valuation in every case where such shipments are made up of nonfragile and/or inexpensive items such as clothing, records, merchandise, etc. Only in shipments containing fragile and/or costly items such as money, precious metals, delicate scientific instruments, X-ray tubes, radium, etc., requiring the highest degree of care in handling by the carrier, and which the carrier protects by rendering special service, is it permissible to declare actual or increased values and pay a consideration for such special service. Savings of considerable magnitude may be made by closely adhering to the long and well established policy of the Government, in assuming its own risks in the same manner as is common among private interests having extensive holdings of consumable property. See FSH 6353. 55 for procedures covering the shipment of valuables within the meaning of the Government Losses in Shipment Act.

4. Pickup and Delivery Service. With certain exceptions, the Railway Express Agency provides free pickup and delivery service. At points where delivery service is not maintained, notice of arrival is sent to consignee by mail to the address shown on the bill of lading. No storage charges are assessed on shipments held by the express company at points where delivery service is not maintained.

The express company will hold a shipment at a nondelivery station for 10 months and, at the end of such time, if no disposition advice has been received, will turn it over to its sales department.



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5. Bill of Lading. For express shipments, a Government bill of lading is prepared in substantially the form and manner outlined in FSH 6355. 2. The carrier which receives or picks up the shipments is in every case, including air express, the Railway Express Agency. As indicated in item 3 above, the released value of the shipment must be shown on the bill of lading and correspondingly marked on the package or packages.

6. Surrender of Original Bill of Lading to Carrier. In every case of shipping by railway express or air express, the original Government bill of lading shall be surrendered to the carrier's agent at point of origin for forwarding with the shipment. The Railway Express Agency has designed a special Government bill-of-lading envelope, Railway Express Agency Form 6038, which, after the Government bill of lading is placed therein, is securely attached to the shipment. Surrender of the original bill of lading to the Railway Express Agency for forwarding with the shipment will greatly facilitate completion of the bill of lading by the consignee.

a. Carrier's Certificate. The following certification must be placed on the original and all components of the Government bill of lading:

Initial carrier's agent, by signature below, certified he received the original bill of lading.

b. Disposition of Bill-of-Lading Components. The complete bill-of-lading set, with the shipment, will be tendered to the Railway Express agent at point of origin. The carrier's agent will receipt for the shipment on the original bill of lading in the space provided for that purpose. He will return only the memorandum copies to the shipper. The shipper (issuing officer) will retain 1 memorandum copy and will forward immediately to the consignee 1 memorandum copy, both copies bearing the above certification. If a contractor is shipper, he will retain 1 copy and will forward 1 copy each to the issuing officer and consignee.

c. Receipt of Shipment. In the event the shipment arrives at destination and is delivered to the consignee without the Government bill of lading, the consignee should sign the Railway Express Agency delivery sheet as evidence of receipt. If the Railway Express Agency follows up with a request for an SF-1108, Certificate in Lieu of Lost U. S. Government Bill of Lading, the consignee should allow 30 days for the carrier to locate the original bill of lading before furnishing such certificate.



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7. Use of Other Forms. Under the conditions outlined and in the manner prescribed in FSH 6355, Temporary Receipts and Certificates in lieu of Lost Government Bill of Lading may be issued to cover express as well as freight shipments. See 6355.6 also for the procedure covering conversion of a commercial bill of lading to Government bill of lading.

8. Water Shipments. Policy. Since water-carrier transportation will usually cost less than rail or truck movements, shipping officers are cautioned to explore the possibilities of shipping wholly by water, or partly by rail or truck and partly by water, where such combined services exist. This procedure assures the lowest transportation cost and eliminates the possibility of General Accounting Office exceptions when transportation bills are placed with that Office for audit. (In computing the cost for a shipment by water, wharfage and handling charges at ports must be considered.) However, notwithstanding the fact that frequently it will be cheaper to ship by water, administrative consideration should be given to greater time involved and what this may mean to consignee. Whenever a shipment is made by other than the most economical route, the bill-of-lading file should be supported by justification for the action. Information regarding water service and charges may be obtained from the local agents. Because of the limited use of such transportation by field offices, detailed instructions are not included here, but they appear in the Administrative Regulations. Any unit needing such information should contact the regional office or experiment station.

6353.58 - Shipper's Export Declarations

1. Requirements. Shipper's Export Declarations, Commerce Form 7525-V, must be filed with Collectors of Customs for all export shipments. If shipments are being made to United States Government agencies or establishments in foreign countries or in territories or possessions of the United States (except Alaska and Hawaii), field offices should request information from the regional office or experiment station regarding the requirements.

2. Exceptions. Declarations need not be filed in the following cases:

a. Shipments of office furniture, equipment, and supplies to United States offices for the exclusive use of such offices.

b. Shipments of household goods and personal property to employees of United States offices or to United States offices for such employees for the exclusive use of such employees.

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c. Shipments of books, maps, charts, and pamphlets made by United States Government offices to foreign libraries or foreign government establishments.

6353.59 - Billing of Transportation Charges by Carriers. Charges for transportation services by common carriers are billed direct to the unit concerned on the public voucher prescribed for that purpose, SF-1113, in the manner prescribed thereon. The voucher must be supported by the original bill of lading (or Certificate in Lieu of Lost Bill of Lading), and, in addition, such other items of demurrage, storage, switching, etc., as may be involved must also be supported by certified miscellaneous freight bills. Transportation which has not been covered by a Government bill of lading (that is, local drayage, shipments of property by padded motor van, etc.), but on which a purchase order has been issued, may be billed on certified invoice or SF-1034, Public Voucher for Purchases and Services Other Than Personal.

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## 6354 - TRANSPORTATION OF SPECIAL COMMODITIES

6354.1 - Transportation of Household Goods

1. General. Policies and procedures governing allowances for the transportation of employees' household goods and personal effects on an official change of station are covered in detail in FSH 6540.

2. Shipments Involving Points Outside the Continental United States. Packing and crating (and where necessary, drayage) services for rail, rail-water, truck-water, or all-water transportation may be obtained from any common carrier without advertising for competitive bids and award of contract. See 28 Comp. Gen. 431 and 21 Comp. Gen. 510. However, in 28 Comp. Gen. 431, the Comptroller General states, "it should be borne in mind that no provision in either the . . . act of September 18, 1940, as amended Transportation Act of 1940, or in Executive Order 9805, as amended, precludes the use of advertising in connection with the movement of household effects of Government employees where administratively such procedure is determined to be in the best interests of the United States." In any event, there should be reasonable price inquiry among possible competitors. If the services cannot be obtained from a common carrier, bids should be solicited in accordance with the provisions of Section 3709, R.S., as amended. Transportation will be allowed and procured in accordance with the provisions of FSH 6543.52.

6354.2 - Transportation of Office Furniture and Equipment.

1. Intracity Moves. When a proposed move of office furniture and equipment involves intracity motor-van transportation, and the cost will exceed the open-market purchase limitation, the competitive-bid procedure should be used. When the cost of the service is within the open-market purchase limitation, formal solicitation of bids and award of contract are not required. This should not be construed, however, as dispensing with reasonable price inquiry among possible competitors.

2. Intrastate Moves. When the move is being made within a State that does not regulate its intrastate motor transportation, and there are no published tariff rates, the procedure outlined in item 1 above should be followed. When the transportation is governed by published tariff rates, a rate inquiry should be made among possible carriers and selection made of the carrier offering adequate service at the lowest rate.

3. Interstate Moves. When the move is being made from a point in one State to a destination in another State, there should be a reasonable rate inquiry among possible motor carriers, considering always the cost of packing and crating and rail shipment. If shipment



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is to be made by motor van, the carrier who, upon inquiry, offers satisfactory service and quotes the lowest tariff rate should be utilized. Under the law, advertising for bids for transportation service is not required when such services can be obtained from any common carrier operating in the territory where such services are to be performed. There is nothing in the law, however, which prohibits such advertising. Therefore, competitive bids should be solicited and a contract awarded whenever it appears that such procedure, as opposed to the rate-inquiry method of selecting a carrier, will be in the best interests of the Government.

6354.3 - Transportation of USDA Exhibits

1. Purpose. Shipments of Government exhibits, in certain instances, and when properly described on Government bills of lading, are subject to reduced rates or to free transportation. The applicable conditions and procedures are described below.

2. Shipments by Railroad Freight. Shipments by freight are described as "Exposition Exhibits, Government, NOIBN (on Government bills of lading)," and are subject to free return when shipped on a Government bill of lading to a given destination, displayed at a fair or exposition held under public auspices, and returned to the point of origin by the exact inverse route. The same type of shipment destined for a circuit movement entirely by railroad freight, for instance, one originating at Washington, D. C., shipped to New York, thence to Boston, Buffalo, Chicago, and back to Washington, is entitled to movement at 50 percent of each local point-to-point rate. In addition, as a special concession, the tariffs provide that exhibits shipped by the Department of Agriculture on a circuit of fairs need not be returned to the point of origin in order to receive the benefits of the rate reduction. This means that a circuit movement such as that cited above could terminate at Buffalo or Chicago, or at any point following two or more exhibitions, the exhibits could be shipped to a destination other than point of original shipment, and the Department would still be entitled to the reduced rate. Shipments of exhibits made under reduced rate tariffs are specifically excepted from railroad pickup and delivery tariffs.

a. Bill-of-Lading Notations. Government bills of lading issued for transportation of Department exhibits should bear a notation that the shipment is either on circuit or subject to free return, whichever may be the case. Bills of lading covering return shipments from one-point exhibitions, or covering the second and succeeding shipments on a circuit, should bear the following endorsement by the secretary or other responsible official of the fair or exposition:

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## CERTIFICATE OF EXHIBITION AND OWNERSHIP

The exhibits shipped under this bill of lading, property of the United States Government, were exhibited at the

\_\_\_\_\_ from \_\_\_\_\_  
to \_\_\_\_\_, 19\_\_, and ownership did not change.

\_\_\_\_\_  
Secretary

b. Exception. Shipments are not given reduced rate or free return privilege unless they are actually and exclusively to be shown at an exposition or fair, or for educational purposes. If they are shipped for any other purpose, the full rate applicable will be assessed.

3. By Express or Motor Freight. There are no express or motor-truck tariffs that provide for the movement of exhibits at reduced rates, and if a circuit of freight shipments is interrupted by an express or motortruck shipment, eligibility for reduced rates under the exhibit tariff is lost, unless two or more exhibitions precede such interruption, in which event the circuit is regarded as completed with the last freight shipment before the interruption. Another circuit may begin with resumption of rail freight shipments if two or more exhibitions remain to be made.

6354.4 - Transportation of Government Records

1. All-Rail, All-Water, or Rail-Water Shipments. Low classification ratings apply to the shipment of records by rail, by water, and by rail-water between points in the United States, when each shipping package is released to a value not exceeding 3-1/2 cents per pound. Each such shipment must meet the requirements of the following classification description, "records, office, old, in boxes, bundles, cartons, or in filing cabinets or in transfer cases in crates; or in filing cabinets or transfer cases not crated but with drawers locked or otherwise securely fastened." Bills of lading covering such shipments should fully describe the item and the manner in which it is shipped, that is, they should include a statement that "the agreed or declared value of the property is hereby specifically stated to be not exceeding 3-1/2 cents per pound." Higher rates apply when the valuation is stated to be in excess of 3-1/2 cents per pound.

2. Truck Shipments. Low classification ratings also apply to the shipment by truck of "records, office, old, in boxes, or filing cabinets, or metal transfer cases, crated; or in filing cabinets or metal transfer cases steel strapped, wire bound, or otherwise

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securely protected against opening in transit," on a released valuation of 3-1/2 cents per pound. In addition to a full description of the item, bills of lading issued for truck movements should also carry the statement quoted in item 1 above relative to the released value. (This subsection refers to transportation by regular merchandise truckers and not to padded motor-van carriers of the type generally employed for transporting household effects.)

3. Checking Transportation Cost. Consideration should be given to the possibility that truck rates may be lower than rail rates. Also, truckers generally offer the advantage of free "store-door" pickup and delivery service. Rail carriers provide free pickup and delivery service on less than carload freight only, and even then there are many exceptions. For further consideration is the possibility of lower rates applicable to water or combination rail-water or truck-water service where such service is available and practicable as a means of shipment.

6354.5 - Transportation of Explosives. The Interstate Commerce Commission has issued and, from time to time, amends regulations for the transportation of explosives and other dangerous material. Whenever shipments of an explosive nature are contemplated, the shipping requirements and limitations should be checked with the Interstate Commerce Commission or with the local agent of the carrier by which the shipment will be made.

6354.6 - Transportation of Safety Matches. There are postal regulations prescribing the manner in which safety matches must be packed before they will be admitted to the United States mails. Shippers are cautioned to check the packing requirements with local post offices or the Department post office in Washington, D. C. when they plan to make such a shipment by mail.

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6355 - TRANSPORTATION FORMS

6355.1 - Authority. The standard forms described in this section are prescribed by General Regulations No. 97, Revised, issued January 21, 1946, by the Comptroller General, to accomplish the transportation of Government property and the billing and payment for transportation services.

6355.2 - Bill of Lading

1. Standard Form. The standard Government bill of lading form, with components as listed below, should be used to cover the shipment, transportation, and delivery of Government property by transportation companies:

SF-1103, U. S. Government Bill of Lading - Original

SF-1104, U. S. Government Bill of Lading - Shipping Order

SF-1105, U. S. Government Freight Waybill— Original

SF-1106, U. S. Government Freight Waybill - Carrier's Copy

SF-1103a, U. S. Government Bill of Lading - Memorandum Copy (in multiples as required)

2. Symbols and Numbers. Department of Agriculture bills of lading are numbered consecutively from serial numbers assigned by the Office of Information. The serial number appears in the upper right corner and in the body of the bill-of-lading form. In accordance with the General Regulations, each serial number must be preceded by the symbol "A." Transit bills of lading will show the letter "T" as an insert between the symbol "A" and the serial number. See 6355.3 below on the subject of transit bills of lading. The number appearing on the bill-of-lading five-part form should also be shown on all extra memorandum copies used.

3. Preparation; Bill-of-Lading Entries. It is important that bills of lading be carefully prepared. They should be legible and complete in strict accordance with the instructions on the reverse side. Any errors in filling out these documents as to consignee, destination, description, and marking of articles to be shipped, or the route specified, may easily result in unwarranted cost to the Department. The following instructions cover the preparation of a bill of lading, and the ensuing procedure necessary to actual shipment by the shipper, up to and including receipt of the shipment and accomplishment of the bill of lading by the consignee.

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a. Name of Initial Transportation Company. There shall be indicated in this space the name of the carrier to whom shipment is tendered at point of origin.

b. Traffic Control No. This space should be left blank unless it is necessary that a control number be assigned to a shipment for export or for other reasons specified by an agency exercising regulatory control over transportation.

c. Carload Information. Only in the case of a carload shipment will the spaces under the following headings near the top of the bill of lading form be utilized.

Car Initials and No., Car Length Ft. & Ins., Marked

Capacity of Car, and Date Car Furnished

The space marked "Stop This Car At \_\_\_\_\_ For \_\_\_\_\_" will be utilized only when it is desired that the car be stopped in transit between the origin and destination for partial loading or other reasons. See 6355.3 relative to the use of transit bills of lading where long stopovers are involved.

d. Determination of Quantity to be Shipped. It should be determined in advance of making shipment whether or not the quantity to be shipped is sufficient to be moved as a carload. If it is of sufficient quantity, determination should be made as to what size car will accommodate the shipment and an order placed for the minimum-size car that will fulfill requirements. The standard car is 36 feet 6 inches long, inside measurement, and care should be taken not to order longer cars unless they are absolutely necessary. It is a well-established rule that if a carrier furnishes a longer car than the car ordered, the minimum weight shall be that fixed for the car ordered unless the loading capacity of the car furnished is used. In case an order is given for a car and it later develops that the shipment is not large enough to make up a full carload, the bill of lading should be endorsed "Tendered as a less-than-carload shipment - other freight may be loaded in car," in order that the lower rates will be protected, whether carload or less-than-carload.

e. Date B/L Issued. This entry must be made on all bills of lading.

f. Shipping Point. There shall be indicated the name of the town or city and State from which shipment will originate.

g. Full Name of Shipper. If shipment is to be made by a contractor or vendor, his name should be indicated. If shipment



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is to be made by a Government agency, the name of the agency should be indicated.

h. Marks. There shall be listed the marks as shown on the package or packages being shipped.

i. Office to be Billed for Transportation Charges. The space provided for the "Department or Establishment and Bureau or Service and Location" is usually overprinted somewhat as follows:

"U. S. Department of Agriculture, Forest Service." Overprint of the "Location" is optional dependent on agency requirements. If bills of lading are furnished from the Central Supply Division emergency stock supply, they bear no specific agency overprint; the overprint is "U. S. Department of Agriculture," only, and the agency name and location must be inserted.

j. Appropriation Chargeable. The appropriation accountable for the transportation charges must be entered in this space.

k. Issuing Office. There should be indicated the name of the agency office issuing the bill of lading as, "Procurement Office," "Property Office," etc.

l. Name and Title of Issuing Officer. There should be indicated the name and title of the officer issuing the bill of lading as, "John Smith, Procurement Officer."

m. Consignee. The name of only one consignee shall appear on the bill of lading, except that there may be specified the name of a party other than the consignee at the same destination to be notified of the arrival of the shipment. Delivery will be facilitated by including in the space provided, the street address of the consignee. Such information enables the carrier to give proper and prompt notice to the consignee when shipment arrives at destination. When this information is not provided, arrival notices are sent out in the general delivery of the post office, and if shipment is consigned to a large city, the delay, while the post office is ascertaining the street address of the consignee, may result in otherwise avoidable demurrage or storage charges.

Consignments to Nonagency Stations. Freight consignments to a station at which there is no railroad agent are left on the station platform or in cars on the siding, and the arrival notice is sent out from the nearest station at which there is an agent. Because such shipments are left unguarded, they should be

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picked up promptly. In some instances, stations are restricted as to the type of freight which can be received. There may be no track facilities for unloading carload shipments or less-than-carload shipments of heavy equipment which the tariff provides must be unloaded by the consignee. Shippers should take due precaution in this regard. Local freight agents usually are in possession of the information necessary to determination of station facilities.

n. Destination. There shall be indicated the name of the city or town and State at which the consignee will receive shipment. This should be the destination having freight station nearest to consignee's point of use.

o. Route. It is the established policy that only the initial carrier with the statement "forward via lowest reasonable available route" shall be shown on the bill of lading, and further, that bill of lading shall carry a through route only when some substantial interest of the Government is to be served thereby. (See items (3) and (4) below.) Within the framework of this policy, agencies should, in so far as practicable and when competitive bidding is not required, distribute Government business equitably among the various carriers and modes of transportation, with due regard to available rates and agency service requirements.

(1) Rail: Initial Carrier Determination. When the bill of lading is used at the point of origin, information regarding the correct initial carrier can be obtained from local railroad agents. When the bill of lading is issued from a point other than the point of origin of shipment, determination of the correct initial carrier can be obtained from local railroad agents or through the use of the "Official Guide of the Railways and Steam Navigation Lines of the United States," published by the National Railway Publication Company, 424 West Thirty-third Street, New York, New York, at \$3.50 per single copy.

Use of the Guide. In the back pages of the Guide, there is an alphabetical index of railroad stations which lists the railroad carriers serving each station. If, in checking the shipping point and destination, it is noted that both points can be served by one carrier, that is the carrier which should be specified on the bill of lading. If the shipping point and the destination are served by different carriers, examine the individual territory maps of the carriers serving the points of origin and destination and specify the carrier serving the point of origin whose line runs in a general direction toward the destination.

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(2) Motor Freight. If it can be determined locally that use of a motor carrier, properly certificated by the Interstate Commerce Commission, will not result in freight charges in excess of the cost for the same service by rail carrier, or it is desired to take advantage of service offered by truckers because of fast freight schedules and/or particular handling or free pickup and delivery service, such trucking service may be utilized. In many instances, motor freight may be cheaper than rail freight.

(3) Water Carriers. When it appears that a substantial interest of the Department may be served in shipping by water (see 5 AR 522), information concerning rail-water or all-water rates and routes should be obtained . . . in accordance with the procedure prescribed in 5 AR 521d and d. 5. If it proves advantageous to ship by this method, the through route should be specified on the bill of lading (5 AR 522b).

(4) When a Through Route by Common Carrier Must be Specified. Although freight privileges in the form of land-grant deductions are no longer applicable to civil Government shipments, carriers may still offer reduced rates under Section 22 of the Interstate Commerce Act. Such available reduced rates are usually applicable only over specified routes. Information concerning such rates having general application is contained in section 10 of this chapter. For procedure covering application for reduced rates, see 5 AR 521b. In accordance with item (3) above, through routes should be specified when making water shipments.

(5) When to Specify a Particular Delivering Carrier. A carrier cannot be presumed to know the location of the consignee's warehouse. Thus, if shipment involves the movement of a carlot which is for unloading by the consignee, or if the shipment involves a less-than-carload movement on which carriers' tariffs do not include free delivery service, it is desirable to specify on the bill of lading the name of the delivering carrier whose freight station or team track is nearer consignee's point of use. In making LCL shipments to a destination where, under the provisions of the tariff rate, free delivery service is allowed within the city limits, it is not necessary to consider the question of the delivering carrier unless the consignee is located outside of the city limits.

p. Pickup Service at Origin. The statement of pickup service must be initialed by a person having accurate knowledge of the facts and in most instances it will not be the person

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signing the bill of lading as issuing officer. The applicable word or words must be inserted (FSH 6353.51).

q. Description of Articles Shipped; Number and Kind of, and Numbers on Packages; Weights, etc. All articles should be described specifically, naming such weights, dimensions, and manner of packing as will enable carriers to ascertain classification and rates, and to enable recovery in case of loss or damage (FSH 6353.53). In listing articles, terms of general description such as grain, stone, lumber, paper, etc., should be avoided. The name of the commodity should be stated in terms provided in tariffs and the "Consolidated Freight Classification," as: corn, crushed stone, pine lumber, tissue paper, etc. If it is not possible to designate classification or tariff descriptions, clear nontechnical descriptions should be used. Indicate whether in bags, in barrels, in bundles, or boxed or crated; specify if "set up" or "knocked down."

(1) Weight. Whenever it is possible, the actual weight of a shipment, or if several packages of different classes comprise a shipment, the separate weight of each class of package, should be determined and entered on the bill of lading. Railroad scale weights are acceptable. Cubic measurements for shipments by water carriers should also be shown where required. In making a large shipment which it appears is or is close to being a carload, precaution should be taken to specify the actual weight or estimated weight and not the minimum carload weight applicable to the goods being shipped.

(2) Spaces to be Left Blank. The boxed section headed "For Use of Destination Carrier Only" must not be covered by writing or marks since it is for the sole use of the accounting office of the destination carrier to insert therein the proper class, rates, and charges. This box section is not ruled on the memorandum copy of the bill of lading and such space thereon may be used by the issuing officer for showing the estimated transportation charges, and for such other accounting classifications as may be administratively required.

r. Certificate of Issuing Officer. The issuing officer must, in every case, sign the Certificate of Issuing Officer regardless of whether the bill of lading is to be used by a contractor as shipper. Carbon impression signatures on the shipping order and the other forms are acceptable. When the bill of lading is to be used by a contractor as shipper, it is particularly important that the issuing officer fill in above his signature the contract or purchase-order number, the date thereof, and the f. o. b. point named in such contract or purchase order. This



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reference should agree with the shipping point as named under bill of lading. Unless such data appear on bills of lading, carriers may refuse to accept the shipment from a contractor as shipper. If the issuing officer acts also as shipper, he may utilize the space above his signature headed "Other authority for shipment," as his particular agency may require.

s. Name of Transportation Company--Receipt by Carrier. Upon delivery of the property to the carrier for shipment, the bill of lading must be signed and dated by the agent of the initial carrier as indicated in the spaces provided for that purpose.

4. Disposition of Bill of Lading Forms by Consignor

a. \*-Completion by Initial Carrier. \*- When the bill of lading is properly prepared by the issuing office, it, with all memorandum copies, the shipping order, and the two freight waybills, is tendered by the consignor with the shipment to the originating carrier. The agent of the carrier receipts (in the space provided--item a above) the original and all copies, returns the original and memorandum copies, and retains the shipping order and the two freight waybills. The consignor then forwards the original to the consignee and makes such distribution of the memorandum copy (or copies) as meets individual agency requirements.

b. Original Bill of Lading Retained by Carrier. Normally, the original bill of lading should be immediately forwarded by the shipper to the consignee (as outlined in item a above), in order that it will be in his possession upon arrival of the shipment at destination when it will be promptly receipted and surrendered by him to the delivering carrier for billing. However, there may be instances when this procedure would result in the shipment arriving at destination ahead of the bill of lading, for example, in cases of single-line rail hauls, shipment by air express, or railway express and more often in the case of short-distance hauls by truck. In such circumstances, the original bill of lading may, if the carrier agrees, be surrendered to the carrier to accompany the shipment. When this procedure is used, the following certificate must be placed on the original and all copies of the bill of lading, and the signature of the initial carrier's agent in the space provided for receipt by him will constitute a proper execution of the certificate: "Initial carrier's agent, by signature below, certifies he received the original bill of lading."

Note concerning disposition of memorandum copies: In such cases the shipper (issuing officer) will retain 1 memorandum copy of the bill of lading and will forward immediately to the consignee 1 memorandum copy, both copies bearing the above certification.



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If a contractor is shipper, he will retain 1 copy and forward 1 copy each to the issuing officer and consignee.

5. Execution of Consignee's Certificate of Delivery and Surrender of Original of Bill of Lading to Final Carrier. The shipper or issuing officer will execute no portion of this entry. Upon receipt of the shipment, and after checking same with the bill of lading, the consignee (or in the absence of the consignee, some person duly authorized by him) shall accomplish the bill of lading in handwriting in ink as outlined thereon, and surrender it to the agent of the delivering carrier. If at the time of delivery, it is evident that there is loss or damage involved, notations as to the nature and extent thereof should be made in the space provided on the reverse of the bill of lading. In cases of loss or damage which do not become evident until after delivery has been made, such loss or damage should be reported to the local agent of the delivering carrier as soon as possible thereafter (FSH 6353.55). The consignee must not neglect to complete the statement as to delivery service (FSH 6353.51).

6. Ordering Special Services. When a carrier is requested to perform special services incident to the line-haul transportation, the bill of lading should be endorsed to show the name of the carrier upon which the request was made, the kind and scope of the special services ordered, and the fact that such services were rendered. This endorsement should be signed by or for the person who ordered the special services. If it is not practical to so endorse the bill of lading, the same information may be provided in a statement bearing the symbol and number of the covering bill of lading. This statement should be signed by or for the person who ordered the services and, if possible, attached to the bill of lading. If the bill of lading is not available, the statement should be surrendered to the carrier from which the services were ordered, for transmittal to the last line-haul carrier and presentation in connection with the bill for line-haul transportation charges.

7. Supplying Contractor or Vendor With Bill of Lading. Bills of lading supplied contractors or vendors called upon to ship material at Forest Service expense should be filled in at least as to appropriation from which charges should be payable, office to which charges should be billed, consignee and destination, and issuing officer's certificate.

\*-8. Accountability (FSH 6411)-\*

### 6355.3 - Government Transit Bills of Lading

1. Definition of Transit. Transit, as that term is used, is the practice, authorized by tariffs, of shipping a commodity from point A to point B, there subjecting it to some manufacturing or commercial process (or storage), and reshipping it to destination C at a through rate less than the combination of local rates from A to B

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and from B to C, which would be applicable in the absence of a transit provision. The shipment usually passes out of the carrier's control at transit point B and at a later date is again delivered to the carrier for further transportation.

2. Use. The following standard forms have been prescribed for use in connection with Government shipments accorded transit reshipment privileges:

SF-1131, U. S. Government Transit Bill of Lading--Original.

SF-1132, U. S. Government Transit Bill of Lading--Shipping Order.

SF-1133, U. S. Government Transit Freight Waybill--Original.

SF-1134, U. S. Government Transit Freight Waybill--Carrier's Copy.

SF-1131a, U. S. Government Transit Bill of Lading--Memorandum Copy.

The transit bill of lading will be issued, after shipment has been made from origin to transit point, to cover shipment from the transit point to destination. The regular bill of lading will be issued to cover shipment from origin to transit point. The size of the transit bill of lading is 8-1/2 by 14 inches, which is 3 inches longer than the regular bill of lading. The extra space has been utilized, in the body of the form under the space provided for description of shipment, for the furnishing of information relative to the inbound shipment from origin to transit point. The U. S. Government Transit Bill of Lading forms will be assigned, by the Office of Information, a separate set of serial numbers with the letter "T" placed between the regular Departmental letter symbol "A" and the serial number.

3. Related Forms. SF-1107, 1108, and 1108a (Temporary Receipt in Lieu of U. S. Government Bill of Lading, and Certificate in Lieu of Lost U. S. Government Bill of Lading--original and memorandum copy), and the bill of lading continuation sheets (SF-1109, 1109a, 1110, 1111, and 1112) may be used in connection with the transit bill of lading in the same way as they are used with the regular bill of lading.

#### 6355.4 - Temporary Receipt for Shipment

1. Use. In the event the bill of lading covering a shipment is not in the hands of the consignee upon arrival of the shipment, there may be temporarily substituted for the bill of lading, SF-1107, Temporary Receipt in Lieu of U. S. Government Bill of Lading.

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Use of the temporary receipt should be limited, as far as practicable, to cases where the receipt of the bill of lading has been delayed and where immediate delivery of the shipment is imperative.

2. Records. In no circumstances will transportation charges be paid on a temporary receipt; hence, in order that prompt payment may be made to the carrier, the person responsible for issuing the temporary receipt(s) should maintain a record of those issued and promptly replace them with the original bills of lading or certificates in lieu of lost bill of lading.

6355.5 - Certificate in Lieu of Lost Government Bill of Lading

1. Use. If the original bill of lading cannot be found after every effort has been made to locate it, and it is evident that it has been lost or destroyed, SF-1108, Certificate in Lieu of Lost U. S. Government Bill of Lading and SF-1108a, Memorandum Copy, may be used as a basis for settlement of the transportation charges. The consignee may issue a certificate in lieu of lost bill of lading provided that he is an employee of the Forest Service, has access to the forms, and there are office records that will permit the maintenance of a permanent record of the issuance of such certificates by means of the memorandum copies. He must also have in his possession at the time of issuance a memorandum copy of the lost original bill of lading, SF-1103a or 1131a, or the carrier's freight waybill, SF-1105 or 1133, which will enable him to process the certificate in lieu of lost bill of lading in every detail. If the consignee does not have the proper documents to enable him to prepare a certificate in lieu of lost bill of lading, he must refer the matter to the officer who issued the original bill of lading. The issuing officer will prepare the certificate in lieu of lost bill of lading and immediately forward it to the consignee for execution of the certificate of delivery.

2. Execution of Certificate. The following certificate which has been incorporated in the Certificate of Issuing Officer and in the Certificate of Consignee printed on the face of the Certificate in Lieu of Lost U. S. Government Bill of Lading, SF-1108, must be executed by the consignee or the issuing officer who issues the certificate in lieu of the lost bill of lading: "Issued in Exact Conformity with Standard Form No. \_\_\_\_\_ in My Possession."

3. Disposition. If the consignee has already issued a temporary receipt, he should so indicate on the certificate in lieu of lost bill of lading, turn the latter over to the carrier, and send a copy through proper channels to the administrative accounting office concerned.

4. Use of Old Certificates in Lieu of Lost Bill of Lading. Until such time as any supplies of certificates in lieu of lost bill of

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lading prescribed by General Regulations 97, issued April 13, 1943, on hand are exhausted, a certificate in the exact words stated in item 2 above should be stamped or typed on the face of the certificate in lieu of lost bill of lading.

5. Original Bill of Lading Located

a. Before Settlement is Made. If the original bill of lading is located before settlement is made on the certificate in lieu of lost bill of lading, said original bill of lading will be substituted therefor and the certificate will be marked with the notation "Canceled--original bill of lading located and delivered to the destination carrier" and returned to the office which originally issued the certificate in lieu of lost bill of lading.

b. After Settlement is Made. If the original bill of lading is located after settlement is made, it will be forwarded, with appropriate advice, to the administrative office concerned, there to be properly voided and inscribed with the number and date of the schedule on which the Certificate in Lieu of Lost U. S. Government Bill of Lading, issued in its stead, was paid, and then transmitted to the fiscal agent for filing with the GAO copy of the schedule.

6355.6 - Commercial Bill of Lading Converted to Government Bill of Lading

1. Policy. Government property should not be shipped on a commercial bill of lading or express receipt unless such procedure is unavoidable. Payment to the carrier of the transportation charges will not be made by the Forest Service on such commercial document alone.

2. Procedure. If shipment is of necessity made on a commercial bill of lading or commercial express receipt, the words "To be Converted to a Government Bill of Lading" must be placed on the original commercial document and all copies. If the consignee is not a Government employee or establishment, the original commercial bill of lading or express receipt shall be forwarded by the shipper to the Government official who authorized the shipment. The consignee or other authorized officer will then prepare a Government bill of lading to cover the shipment, signing as issuing officer. The commercial document on which property was shipped should be securely attached to the Government bill of lading and both the Government bill of lading and commercial document should be cross-referenced and forwarded promptly to the consignee (if the consignee is not preparing officer) for execution of consignee's certificate of delivery on the Government bill of lading and surrender thereof to the destination carrier upon delivery of the shipment.



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The signature of the agent of the initial carrier will not be required on the Government bill of lading as it will appear on the commercial document.

3. Lost Commercial Bills of Lading

a. Converting Other Than Original Commercial Document. If the commercial bill of lading or commercial express receipt on which Government property was unavoidably shipped should become lost or destroyed, but the consignee has in his possession the carrier's shipping order, or the carrier's freight waybill, or the Railway Express Agency delivery sheet, the consignee may convert such commercial document to a Government bill of lading which he will obtain, if he himself is not in a position to furnish it, from the Government official who authorized the shipment. To avoid duplicate payment of the transportation charges, there should, of course, be an adequate system of control such as the maintenance of a record of the issuance of Government bills of lading in conversion of commercial documents.

b. Converting Photostat Copy of Other Than Original Commercial Document. Under the same conditions, the consignee may also convert a photostat copy of the carrier's shipping order, or the Railway Express Agency delivery sheet, to a Government bill of lading provided that, before photostating the commercial document, the carrier places thereon a notation as follows: "Photostat Copy of This Document Furnished Consignee on \_\_\_\_\_ (date) \_\_\_\_\_ to be Converted to a Government Bill of Lading."

c. Converting Certified Copy of Other Than Original Commercial Document. A certified true copy of the above commercial documents furnished by the carrier may likewise be converted to a Government bill of lading by the consignee, provided the certified true copy contains a carbon impression thereon obtained by typing or otherwise placing on the carrier's shipping order, or the Railway Express Agency delivery sheet, the following statement: "Certified True Copy of This Document Furnished Consignee on \_\_\_\_\_ (date) \_\_\_\_\_ to be Converted to a Government Bill of Lading."

d. Location of Lost Original Commercial Document. If the lost original commercial bill of lading or lost commercial express receipt is located subsequent to the conversion of the carrier's shipping order, or the carrier's freight waybill, or the Railway Express Agency delivery sheet to a Government bill of lading, it will be forwarded with appropriate advice to the administrative office concerned, where after payment has



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been made on one of the above documents, the original will be properly voided and inscribed with the number and date of the schedule on which paid, and then transmitted to the fiscal agent for filing with the GAO copy of the schedule.

6355.7 - Related Transportation Forms

1. Continuation Sheets. The following standard forms are prescribed as continuation sheets for use, if needed, with the regular Government bill of lading, SF-1103, etc., and the Government transit bill of lading SF-1131, etc.:

SF-1109, U. S. Government Bill of Lading--Original Continuation Sheet.

SF-1109a, U. S. Government Bill of Lading--Memorandum, Continuation Sheet.

SF-1110, U. S. Government Bill of Lading--Shipping Order, Continuation Sheet.

SF-1111, U. S. Government Freight Waybill--Original, Continuation Sheet.

SF-1112, U. S. Government Freight Waybill--Carrier's Copy Continuation Sheet.

2. Voucher Forms

a. Use. SF-1113, Public Voucher for Transportation Charges (original) and SF-1113a, Public Voucher for Transportation Charges (memorandum) are prescribed for use by carriers as the forms on which to bill their charges against all branches of the Government service for the transportation of things. The arrangement of this voucher form requires only the listing of the symbol and serial number and amount of each bill of lading, and does not provide for descriptive details of the service rendered.

b. Cost. Except as hereinafter explained, carriers will bear the cost of the transportation voucher forms. They may purchase them from the Superintendent of Documents, Government Printing Office, Washington, D. C., or may print the forms themselves, or have them printed by any association of carriers, provided the exact size, wording, and arrangement, as approved by the Comptroller General of the United States, is adhered to.

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(1) Furnishing Vouchers to Carriers. If there arises the question of Department agencies furnishing copies of the standard transportation companies (primarily small truckers), whose business with the Government is so intermittent that their knowledge of Government billing procedures, forms, etc., is somewhat limited, the procedure should be as follows:

(2) Education in Billing Requirements. Where offices have been in the habit of supplying small independent carriers with voucher forms, and where it is known that additional shipments will be made by the same carriers, there should be instituted a gradual education in billing requirements. In other words, rather than continue to supply a certain carrier with a voucher each time he makes a shipment, it is suggested that he be furnished with one copy to use as a sample and possibly others to take care of his immediate needs, and that he be advised how and where he may obtain a supply.

(3) Exceptions to General Rule. In some instances, however, it may be impractical to ask carriers rendering very infrequent service to obtain a supply of voucher forms through the prescribed channels. In such cases, there is no objection to furnishing the carrier with a voucher. Field officers should judge the merits of each case.

(4) Requisitioning Forms. Supplies of SF-1113 and 1113a, for the purposes mentioned above, may be obtained from the GSA Supply Centers.

6356 - GENERAL SERVICES ADMINISTRATION ASSISTANCE ON  
TRANSPORTATION MATTERS.

1. GSA Inspection of Shipping Facilities. Shipping personnel of Forest Service are requested to cooperate with traffic representatives of the GSA who may periodically visit field shipping offices to consider transportation problems cooperatively with the objective of establishing improved shipping procedures to the end that transportation costs may be reduced to a minimum. An agreement has been reached with GSA whereby field contacts will be made with Forest Service regional offices. The Chief's office will assist in any way possible should problems arise which cannot be worked out locally.

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2. Liaison With General Services Administration. Proposals, recommendations, or reports required to be submitted to the GSA shall be referred to the Chief's office.

3. Authority for Tariff Files. Regulations issued by the GSA provide that executive agencies maintaining files of freight tariffs may continue to maintain such files provided they are kept current and are limited to the operational needs of the respective agencies. Unless otherwise authorized, no new files will be established.



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### CHAPTER 6360 - PRINTING

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\* Abbreviations:

M - Manual

H - Handbook



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## CHAPTER 6360 - PRINTING

**\*-6360.1 - Printing Policy (FSM)****6360.2 - Printing Authority and Limitations (FSM)****6360.21 - Legal Authority for Printing (FSM)****6360.22 - Contract Field Printing Authority (FSM)****6360.23 - Limitations on Color Printing (FSM)-\***

**6361 - DEFINITION.** The term printing as here defined includes the following:

1. Preparation of final copy by typesetting or by any method used as a substitute for typesetting.
2. Preparation of final copy for reproduction by photo-mechanical means. This does not apply, however, to material to be produced on office-type duplicating machines that are not operated in connection with an authorized Government printing plant.
3. All common processes of reproduction such as letterpress, photo offset (lithographic), gravure, steel engraving, or embossing (including duplicating by office-type machines operated in connection with authorized Government field printing plants). Also, the silk-screen process when used as a substitute for such common processes of reproduction.
4. All power cutting and binding operations required to complete manufacture.

The term printing does not include:

1. Operation or product of office-type duplicating machines, that is, mimeograph, ditto, speed-o-print, etc., to produce up to 25,000 aggregate production units from original stencils or masters. A production unit is one 8-inch by 10 1/2-inch sheet, one side only.
2. Operation or product of small (taking no greater than 14-inch by 20-inch sheets) multilith machines using directly typed plates to make no more copies than can be produced from original plates. Occasionally, photomechanical plates may be used, if necessary, as an integral part of a complete job involving directly typed multilith plates or stencils.

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3. Photographic reproduction if not operated in conjunction with duplicating machines using photographically made plates.

4. Operation of office-type folding machines capable of handling sheets not larger than 14-inches by 20-inches, or strictly office-type collating, stapling, or punching machines, whether or not used to finish copies of materials duplicated on office-type duplicating machines. Office type is understood generally to mean portable machines made for office or occasional use, as distinguished from permanent-type installations for mass production in printing-plant operations.

5. Operation of assembling, stapling, or folding machines used only for mailing purposes.

6362 - FIELD PRINTING

1. Definitions. The term field printing means all printings, binding, and blankbook work, the need for which originates and which is for use primarily in the geographical area of origin. Such printing may be produced by authorized local government plants or by commercial contractors.

Field printing done by commercial contractors or by authorized Government plants in other departments is termed contract field printing and is limited to an amount authorized annually.

Field printing done by field plants of the Government Printing Office and by authorized plants of the Department of Agriculture is not considered to be contract field printing.

2. Contract Field Printing. Contract field printing is for field-service jobs. It covers regional forms, jobs of small quantities, or work of great urgency, for use primarily in the area of origin. It includes all printing, binding, and blankbook work procured in the field from (1) commercial sources, (2) Government Printing Office field facilities, or (3) plants of other departments to which reimbursement is made. Work produced in authorized class A and B plants of the Forest Service is not chargeable to contract field printing. Contract binding or rebinding of library books or sets of periodicals is considered as contract field printing.

Field offices are authorized to procure work direct from nearby Government or commercial plants, as may be convenient, subject to the following limitation: any contract job exceeding \$500 should be submitted in advance to the Washington office for review in the Division of Information and Education. Advance approval by this

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division is required for contract field printing exceeding 25,000 production units. In addition to cost estimates, give enough details concerning size, quantity, illustrations, etc., so it will be possible to determine a reasonable cost.

Each job of field printing other than letterheads, envelopes, and tabulating cards, whether produced in Government plants or procured from commercial contractors, should be covered by a certificate and bear an imprint giving name of department and location of plant, as illustrated in the following examples:

Agriculture--Missoula, Montana

Agriculture--Acme Company, New York

A certificate of necessity, worded as follows, will be stamped, typed, or printed on, or accompany all accounts covering contract field printing except that obtained from GPO field service offices.

Certificate of Necessity

\*-I hereby certify as responsible officer that the contract field printing covered by this voucher was procured in accordance with the applicable Government Printing and Binding Regulations of the Joint Committee on Printing. -\*

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Title)

The certificate must be signed by the responsible officer in the field under whose authority the field printing is procured.

3. Authorized Field Printing Plants. The Forest Service has approximately 10 authorized field printing plants, which are listed in the regulations of the Joint Committee on Printing, issued July 1 of each year. Legal authority for these plants is in the second exception stated in the act of July 5, 1949 (63 Stat. 405) (FSM 6360, 21).

These plants are authorized to do such field printing as may be urgent or necessary to have done for the use of any field service, the need for which originates and which is for use in the geographical area of origin, provided the same is within the limitations of

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available appropriations and the regulations and authorizations of the Joint Committee on Printing. Classification and authorization as a class A or class B field plant shall not be considered as an authorization to produce quantities in excess of the efficient, economical maximum capacity of the equipment in said plants.

Examples of maximum capacity of multilith presses given in the July 1, 1952, Regulations of the Joint Committee on Printing are: 10-inch by 14-inch press, 8,000 impressions on full-size sheets; 12-inch by 18-inch or 14-inch by 20-inch press, 6,000 impressions on full-size sheets (or 12,000 copies of an 8-inch by 10-1/2-inch page, run "two up"); 17-inch by 22-inch press, 12,500 impressions on full-size sheets. It follows that since a 10-inch by 14-inch press cannot print two 8-inch by 10-1/2-inch pages at one impression, its maximum capacity for a pamphlet with 8-inch by 10-1/2-inch pages would be considered as 8,000 copies, provided that each had few enough pages so that the operations of assembling, stapling, and trimming by hand or with field-plant machines are not unduly time-consuming and hence uneconomical.

The technical factors determining whether a given job can be done economically in a field plant are too complex to be presented here. Therefore, plans for jobs totaling over 25,000 production units (explained below) should be sent to the Washington office for analysis and clearance by trained printing technicians in the Division of Information and Education, before printing work begins. Production plans sent to the Washington office should include:

- a. Production method proposed (mimeograph, multilith, etc.).
- b. Page size.
- c. Press sheet size, and number of pages per sheet.
- d. Total number of pages, including any covers.
- e. Number of ink colors (count black as one).
- f. Estimated total number of copies required.

To compute production units:

Production units equal: Number of 8-inch by 10-1/2-inch pages (one side) x Number of copies x Number of impressions per page (for 2 or more ink colors)

Two pages of 8-inch by 5-1/4-inch size would count as one 8-inch by 10-1/2-inch page.

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4. Use of Duplicating Machines. With the advent into field offices of duplicating machines, the work of which closely approximates printing, it is necessary that close administrative control be exercised over jobs of this nature so as not to contravene the law or regulations of the Joint Committee on Printing.

6363 - REPRINTS \* \* \* (FSH 6316.2)

1. Requests for Reprints of Publications (FSH 6316.2)
2. Purchase of Official Reprints from Outside Publications (FSH 6316.2)
3. Requisitions for Government Printing Office (GPO) Work (FSH 6312.25)

6364 - REPORTS AND FORMS

1. Reports. A report is required on all contract printing transactions completed during each 6-month period. Purchase of official reprints is construed as printing and reportable in the 06, Printing and Reproduction object class. Purchase of official reprints from non-Government periodicals should not be reported or classed as contract field printing. This report is to be filed on the Contract Printing Report J. C. P. No. 2, in triplicate, and is due in the Washington office January 15 and July 15, for review in the Division of Information and Education. It is then forwarded through the Department to the Joint Committee on Printing.

2. Commercial Stock Forms. Any of the following items which are regular stock items and can be supplied from the shelves of a commercial firm (and are not obtainable from the Central Supply Section) may be purchased without obtaining clearance from the Government Printing Office. Any printing or binding operations necessary to make them answer the needs of the Government may be produced under contract field printing and reported on J. C. P. No. 2.

- a. Blank paper.
- b. Columnar pads.
- c. Cross-section paper.
- d. Engineer's transit books.
- e. Engineer's level books.
- f. Mining books.
- g. Scrapbooks.



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## h. Topographical books.

i. Any other standard stock items, regularly carried by stationery firms, which require no additional printing or binding to make them usable by the purchasing office.

In 18 Comp. Gen. 565 the Comptroller General specifically mentioned the following items as not falling within the purview of the printing act \*-(FSM 6360.21). -\*

Pads, ruled and unruled	Sheets, backing (punched but not printed)
Pads, calendar	Labels, gummed
Pads, columnar	Labels, dispensing set
Paper, graph	Labels, poison
Paper, cross-section	Cards, index library
Paper, profile	Cloth, ruled tracing
Filler, looseleaf binder	Cards, guide, monthly
Indices, looseleaf binder	Dials, watchman's clock
Indices, tab, alphabetical	Any other similar paper articles
Sheets, ledger	

Every effort should be made to utilize engineering books of various kinds and other material carried in stock by stationers and other officer supply houses. Close restriction should also be imposed upon development and use of special forms, which in many cases are closely similar to standard forms already provided.

Forms will not be supplied to other agencies except in very special cases and for a very limited number unless the agency requisitioning the forms makes provision for reimbursing or offsetting the costs to the Service.

**6365 - \*-LIMITATION ON PURCHASE AND TRANSFER OF EQUIPMENT.** -\* Pursuant to the authority conferred upon it by the act of March 1, 1919 (44 U. S. C. 4 and 111), the Joint Committee on Printing promulgated regulations which restrict the purchase, rental, exchange, or transfer from another agency or to or from plants within an agency of printing, binding, and related or auxiliary equipment, without its prior clearance. (However, the regulations specify that minor replacement or repair parts for use in connection with authorized printing equipment may be purchased without prior approval.)

Printing equipment for purposes of compliance with the regulations of the Joint Committee on Printing includes the following types of reproduction and finishing equipment:

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1. Printing equipment, or equipment universally recognized as that for mass production and binding or finishing of prepared copy by reproduction on paper. Examples: linotype, proof press, any kind of printer's type. The definition extends to this class of equipment used anywhere in the Department.

2. Copy-preparing typing machines when procured or used for the major purpose of producing copy for photomechanical offset reproduction. Example: proportional spacing electric typewriter used constantly to prepare copy for a photomechanically multilithed product. The definition applies to this class of equipment in use as indicated at any location.

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3. Equipment used for processing or contributing to the processing of multiple copies of reproducible material in class A or class B Department printing plants as defined below, including office-type duplicating machines operated in connection with authorized plants. The definition is limited to this class of equipment in such plants:

a. Class A printing plants are those plants using any of the following methods of reproduction or types of equipment:

Duplicating machines not larger than 14 by 20 inches, printing from flat sheets only which employ (1) photographically made metal offset plates, (2) sensitized paper masters and/or exposure frames used in connection with photographic negatives, or (3) other offset plates on which the image is either reduced or enlarged from the original copy; also photostat, ozalid, B/W blueprint, photodeveloping, photoprinting, photoenlarging, etc., if operated in connection with the above machines.

Hand-operated letterpresses used solely for the production of map and chart titles.

Machines which utilize special-cast type, such as multigraph.

Power-operated cutting and binding equipment required to complete the manufacture of material printed on the aforementioned types of machines or office-type duplicating machines.

b. Class B printing plants are those plants using any of the following methods of reproduction or types of equipment, which may be in addition to any of those listed for class A plants:

Letterpresses of any size which utilize printer's type, plates or engravings, except hand-operated letterpresses used solely for the production of map and chart titles.

Offset presses of any size which print from rolls of paper or which print sheets larger than 14 by 20 inches.

Typesetting or typesetting machines of any kind (linotype, intertype, monotype, etc.).

Manufacture of rubber stamps or rubber plates.

Necessary binding, cutting, and stamping equipment required to complete the manufacture of material produced by any of the aforementioned types of machines.

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The definition excludes "office-type" duplicating machines not operated in connection with authorized printing plants and assembling or finishing equipment, such as: ditto machines, mimeographs; multiliths for direct-plate reproduction (or occasional reproduction from photographically made plates when necessary as an integral part of a completed job involving directly typed plates); speed-o-prints; folding machines handling paper sizes less than 14 by 20 inches; portable or nonplant-type stapling, cutting, punching or collating equipment. See 3 AR 155-7 and the Government Printing and Binding Regulations, issued by the Joint Committee on Printing of the Congress, for further details on printing definitions, etc.

4. Purchase, Exchange, or Transfer of Printing Equipment in Plants

a. Printing Equipment. Proposed purchases, rentals, exchanges, or transfers of printing, binding, and related or auxiliary equipment must be submitted to the Joint Committee on Printing for approval. Requests for approval should be sent to the Chief's office for review and forwarding. See FSH 6400 on the transfer and other disposal of printing equipment.

b. Duplicating Equipment (FSH 6316.2, Mimeograph, Multilith, etc.)

5. Procurement Approval for Printing Equipment (4a above)

6. Reporting Purchase or Disposal to Joint Committee on Printing (FSH 6400)

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### CHAPTER 6370 - INSPECTION

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\* Abbreviations:

M - Manual

H - Handbook



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## CHAPTER 6370 - INSPECTION

6370.1 - Objectives (FSM)6370.2 - Policy (FSM)6370.3 - Scope (FSM)6370.4 - Frequency (FSM)6370.5 - Reports (FSM)6371 - CHECKLIST FOR MANAGEMENT6371.1 - Organization

1. Has there been a recent workload analysis made of procurement services? Is manning consistent with workload? List functional titles and grade classifications.

2. Does the procurement services unit head visualize and effectively carry out the full scope of his assigned responsibilities and delegated authorities?

3. Are procurement services personnel properly organized and supervised? Review organization chart. Have employees a service attitude, namely, that of serving the needs of program people?

4. Are procurement services employees furnished statements of position descriptions? Are they adequate and up to date?

5. Are office methods and procedures designed to conserve staff and clerical effort in performing work? Does work flow smoothly and on schedule?

6371.2 - Delegated Authorities

1. Are delegated authorities adequate? If not, why?

2. Are only personnel having adequate qualifications and experience granted authority to perform contracting, including contract administration?

3. Are purchasing authorities properly delegated to field personnel? Is purchasing or contracting being performed by employees not delegated authority?

6371.3

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4. What is the extent of \*-negotiated-\* purchasing authority to field offices?

### 6371.3 - Planning

1. Does the procurement services unit head participate in the preliminary planning phases of work programs which his unit will serve? Has he been kept abreast of new developments in work programs which affect administrative services operations? In general, is there adequate coordination with those in charge of work programs served?

2. Do project work plans have lists of materials and supplies needed for the planned program?

3. Review jobs relating to procurement services in the Annual Program of Work. Are jobs of current importance and needing priority attention included?

### 6371.4 - Training

1. Do training assignments for procurement personnel include procurement services functions?

2. Are procurement services included on a level with other activities in scheduled regional and forest meetings?

3. Are employees performing procurement services work properly trained?

### 6371.5 - Controls

1. Are local controlling procedures and standards reasonably adequate and based on servicewide instructions?

2. Are procurement services inspections thorough and of proper frequency? Is there adequate followup on report recommendations?

### 6372 - CHECKLIST FOR OVER-ALL PROCUREMENT

1. Briefly describe the over-all service of supply system; that is, use of local purchasing, consolidated purchasing, warehousing (cupboard stocks), stores stocks, central purchase for direct delivery or combinations. Is the supply system coordinated with the services available from Federal Supply Service stores and commercial sources? How adequate are local commercial services?

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2. Are equipment and supply needs planned at the time work project plans are developed?
3. Do procurement personnel use the Economic Order Quarterly (EOQ) method where applicable to determine the economic quantity to order of supply items for which there is a recurring demand?
4. Are requisitions and purchases on a schedule basis? What is the requisitioning schedule for (1) regional office (director's office) or forest requisitions to Federal Supply Service stores, (2) forest (research center) requisitions to regional office (director's office), (3) ranger requisitions to supervisor's office? Are they realistic?
5. Does the procurement time on requisitions provide sufficient lead time to do a good procurement job?
6. Are excess lists checked and excess property on hand considered prior to purchase of new items?
7. What are the relationships with vendors and with SBA, GSA, and area equipment committees?
8. Are procurement services adequately serving work program requirements? Are procurement services internal operations efficiently organized and performed?
9. In general, is the unit living up to its responsibilities? Are conditions satisfactory? What are the trends?

6373 - CHECKLIST FOR PURCHASING

1. Are standard purchase order and requisition forms used? Are they properly prepared? Are purchase orders correctly itemized? Are cash and trade discounts secured when possible?
2. Compare the cash discounts taken with the cash discounts available. Are cash and trade discounts secured when possible?
3. Review report of purchases, GSA form 33. Does a small-purchase problem exist? What is being done to reduce the number of small-purchase orders?
4. Are the Imprest Fund and blanket purchase arrangement used sufficiently? Have analyses been made of purchase orders of \*-\$50-\* or less to local merchants during a period to determine what purchases can be processed more economically using the Imprest Fund? Are there repetitive purchases from the same firm covered by purchase orders? What is the number of blanket purchase orders and nature of items procured?

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5. Are open-market purchase limitations complied with? Are there any split purchases made to circumvent "small purchases" (FSH 6312.2) of section 3709, Revised Statutes, as amended, 4 U.S.C. 5 as amended by Public Law 152, 81st Congress, approved June 30, 1949?

6. Backdating and confirmation of purchase orders--are they excessive?

7. Purchase of foreign-made items.

8. Federal-prisons items and blind-made items.

9. If purchases are being made on exchange procedure or application of proceeds of sale on purchase, are instructions being currently followed?

10. Are office machines, furniture, and other items requiring approval of regional or Washington office being properly cleared?

11. Check requisitions on Federal Supply Service stores. Prepare a worksheet for a quarterly or other selected period. Record on it from the purchase order file, payment schedule worksheets, etc., (1) number of requisitions in amounts \$0-25, \$26-50, \$51-100, over \$100; (2) percentage of total that were back-orders and partial deliveries. Check compliance with established requisition schedules.

12. Are fire control equipment and supply services furnished by Federal Supply Service stores pursuant to the memorandum of understanding dated August 21, 1956, satisfactory? What problems and complaints need attention?

13. Do any problems exist in the use of GSA Federal supply schedules? Is full advantage taken of these contracts in procuring needed items?

14. Are requirements for inspection of supplies and equipment complied with so that goods received are according to specifications, quality, and quantity ordered?

15. Do any Forest Service procurement employees participate actively in Federal cooperative buying associations? Detail.

16. Are the restrictions on rental of equipment or purchases from employees understood? Are agreements prepared prior to hire of equipment?

6374 - CHECKLIST FOR CONTRACTING. Select contract cases at random, and examine each step in process; that is, requisition, specifications, bid invitation, bid opening, bid analysis, award, and administration.

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1. Are bids properly prepared? Are specifications clear? Have all applicable laws been incorporated?
2. Is insufficient time allowed for prospective bidders to prepare and submit bids? Are delivery schedules unrealistic?
3. Do specifications and invitations permit full and free competition to all qualified bidders?
4. Are bids being split to avoid Davis-Bacon requirements? Are the D-B Act provisions complied with in contracting for construction, alteration, and/or repair of public buildings and work when the contract amount exceeds \$2,000?
  - a. Are wage rates presented to the Washington office at least 30 days in advance of scheduled date of advertising?
  - b. If contract is not awarded within 90 days from date of wage determination, are new requests for wage rates submitted in sufficient time?
5. Are bids properly advertised? Is debarred bidders' list up to date and used?
6. Are representative bids sent to Washington office or regional office for review prior to bid solicitation?
7. Are bids properly analyzed to determine low bidder? Is contract properly awarded to responsible bidder whose bid is most advantageous to Government, price and other factors considered?
8. Are there any cases where award was made to other than lowest bidder? Check reasons therefor.
9. Are forests and research centers requesting procurement action from regional \*-administrative services-\* officers and station managers when procurement action could logically be made on a decentralized basis within delegated authorities?
10. Are year-end buying restrictions complied with? Review cases where year-end buying was done.
11. Review arrangements with SBA. What is the effect on service to work programs?
12. Is charter aircraft rental properly contracted?
13. Prepare the following statistics on volume of contracting business during past fiscal year:



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Number of Contracts F.Y. 19\_\_

Cost	Road Const.	Other Const.	Service	Supply	Sales	Total
\$0-2,000						
\$2,001-5,000						
\$5,001-10,000						
\$10,001-20,000						
\$20,001-50,000						
\$50,001-100,000						
Over \$100,000						
Total No.						
<u>Total Expenditures</u>						

List types of (1) other construction projects and (2) services contracted.

14. What is trend in volume and diversity of contracting during current and budget fiscal years?

15. Are conferences with contractor held prior to start of work?

16. Is correspondence with bidders and contractors conducted only by the contracting officer of CODR (contracting officer's designated representative)?

17. Select 2 or 3 contracted work projects at random.

a. Is the CODR properly designated in writing and does he understand his duties and responsibilities? Was copy of letter of designation furnished to contractor?

b. Is CODR supplied with instructions regarding enforcement of labor provisions of the contract?

c. Is the CODR qualified and fulfilling his assigned responsibilities? What actions is he authorized to take?

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- d. Has CODR assigned inspectors to project as needed? How do inspectors function?
  - e. Is contractor performing work in accordance with technical specifications? Review progress of work with respect to contract time and work schedules. Are there any possibilities of overrunning time and assessment of liquidated damages?
  - f. Is contractor complying with the general requirements of the contract?
  - g. Are procedures for effecting contract changes and modifications complied with?
  - h. Is the official log and diary properly maintained? Review the contract file of the CODR for adequacy of documentation.
  - i. Is there any evidence of unauthorized Forest Service personnel giving instructions to the contractor? If so, explain.
  - j. Is relationship with the contractor satisfactory?
  - k. Are there any important problems in contract administration? Are they being handled satisfactorily?
18. Is contracting officer making periodic on-site reviews of going contracts? List those reviewed.
19. Are relations between the contracting officer and program personnel satisfactory?
20. In general, is contracting satisfactory? Is there sufficient qualified personnel to handle the load?

6375 - CHECKLIST FOR PROPERTY TRANSPORTATION

- 1. Make a sampling of procurement transactions involving transportation of "things." Are the most advantageous methods of transporting the article or articles used? Are effective efforts taken to avoid small freight shipments of less than 100 pounds, such as consolidation of shipments, use of shipping schedules, etc. Is parcel post used for small shipments, thus avoiding the cost involved in processing Government bills of lading?
- 2. Are purchases generally made at "destination" prices?
- 3. Are services of GSA traffic management specialists used in solving transportation problems?
- 4. Are Government bills of lading properly prepared?